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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Third periodic reports of States parties due in 1994

Addendum

BELGIUM*

[23 August 1996]

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* For the second periodic report submitted by the Government of Belgium, see CCPR/C/57/Add.3; for its consideration by the Committee, see the summary records CCPR/C/SR.1142 and 1143, and Official Records of the General Assembly, Forty-seventh Session, Supplement No. 40 (A/47/40), paragraphs 395 to 430.

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Annex

Audio-visual distribution in the Flemish Community

Article 1

1. The Government of Belgium refers the Committee to the commentaries to be found in the core document on Belgium (HRI/CORE/1/Add.1/Rev.1) and those relating to article 27 of the Covenant.

Article 2

Equality and prohibition of discrimination

2. The last paragraph of the General Comment on article 26 states that "not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant". The upper Belgian courts (the Court of Arbitration, the Court of Cassation and the Council of State) interpret the principle of equality and non-discrimination in an identical manner, on the clear understanding that the means invoked must also be proportionate to the objective pursued. Although, to date, the condition of proportionality has not arisen in the decisions of the Human Rights Committee, that does not mean that the Committee does not take implicit account of it.

3. Although the Belgian legal system's interpretation of the principle of equality is consistent with that of the Human Rights Committee, articles 2, paragraph 1, and 26 of the Covenant have been the subject of very few judicial decisions in the Belgian courts. Such decisions tend to be based more on an interpretation of articles 10, 11 and 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms than on the corresponding articles of the Covenant.

4. The first sentence of article 10, paragraph 2 of the Constitution provides that "Belgian citizens are equal before the law", while the first sentence of its article 11 states that "Enjoyment of the rights and freedoms accorded to Belgian citizens must be guaranteed without discrimination." It is possible to verify whether acts of the Executive - and, since 1989, rules having the force of law - are compatible with the above-mentioned constitutional provisions.

5. When article 26 of the Covenant is invoked, it is generally in combination with the above-mentioned articles of the Constitution, so that no separate assessment of article 26 takes place. The Court of Arbitration, for instance, ruled that: "Even assuming that [...] these grounds, based on the violation of provisions of international law that set forth the principle of equality and non-discrimination, can be considered as implicitly combined with articles 10 and 11 of the Constitution, it is not apparent that they are founded on arguments other than those already examined [above]." (Court of Arbitration (C.A.), 27 January 1994, No. 11/94, Moniteur belge (M.B.), 5 March 1994.)

6. The above comments call for an explanation, one that is of considerable relevance to equality of treatment of foreigners. It might be wrongly inferred from article 10 of the Constitution that only Belgians enjoy equality of treatment. However, article 10 of the Constitution must be read in conjunction

with its article 191, which provides that any foreigner present within the territory of Belgium shall enjoy the protection accorded to persons and to property, except where otherwise provided by law.

7. In its decision of 14 July 1994 the Court of Arbitration nevertheless stressed that the purpose of article 191 of the Constitution is not to empower the legislature, when establishing a differentiation of treatment, to dispense with the requirement to "have regard to the fundamental principles of the Constitution". Article 191 thus in no way implies that the legislature may, when establishing a differentiation of treatment to the detriment of foreigners, "fail to ensure that that differentiation is not discriminatory, whatever the nature of the principles at issue." (C.A., 14 July 1994, No. 61/94, M.B., 9 August 1994.) Consequently, all individuals on Belgian territory, without distinction, are ensured protection of the rights guaranteed by the Constitution and by directly applicable treaty provisions.

8. It should be stressed that article 11 of our Constitution, which has the same scope as article 26 of the Covenant, imposes an independent legal obligation of non-discrimination, also applicable to social, economic and cultural rights.

9. Recently the Court of Arbitration also ruled on cases of positive discrimination. In order for these to be compatible with the principle of equality and non-discrimination, "they must be applied only in cases where there is manifest inequality, where the elimination of that inequality is designated by the legislature as an objective to be promoted, where the measures are temporary in nature, being intended to be discontinued as soon as the objective sought by the legislature has been achieved, and where they do not unnecessarily restrict the rights of others". (C.A., 27 January 1994, No. 9/94, M.B., 23 March 1994.)

10. The creation of a Centre for Equal Opportunity and Action to Combat Racism (Act of 15 February 1993, M.B., 19 February 1993) and the Act Promoting Balanced Representation of Men and Women on Lists of Electoral Candidates may be seen as specific measures taken recently by the authorities in the context of promoting equality and combatting discrimination (Act of 24 May 1994, M.B., 1 July 1994, see commentaries on article 3 of the Covenant).

Direct applicability

11. The International Covenant on Civil and Political Rights is an integral part of the Belgian legal system. The provisions of the Covenant can be invoked before national judges, who apply them where they are directly applicable. In the event of conflict with a rule of domestic law, the directly applicable rule in the Covenant prevails over the domestic rule.

12. The Belgian courts, both ordinary and administrative, have generally accepted the direct applicability of the Covenant and apply its provisions more or less automatically, without even first establishing whether the provision in question is in fact directly applicable. During the period under review no case arose in which the provisions of the Covenant were not considered directly applicable. Contrariwise, many judgements and decisions were handed down in which the provisions of the Covenant were applied. These chiefly concerned

article 2, paragraph 3, articles 6, 7 and 9, paragraph 3, articles 12 and 13, article 14 (in general, and its paragraphs 1, 3 and 5 - 7), and articles 17, 18, 23 and 26.

13. Non-application of an article of the Covenant results, not from its lacking direct applicability, but from differing interpretations thereof by the litigant and the court (Cass., 3 March 1992, (Pas., 1992; Cass., 23 January 1992, Pas., 1992).

14. During the constitutional review (articles 10, 11 and 24), the Court of Arbitration interpreted these provisions in the light of the Covenant (C.A., No. 90/94, 22 December 1994, M.B., 12 January 1995; C.A., No. 61/94, 14 July 1994, M.B., 9 August 1994).

15. During the period under review, legal decisions continued to follow a trend that had already become apparent, namely, to invoke not only the applicable provision of the Covenant, but also the corresponding provision of the European Convention on Human Rights (Cass., 19 January 1994, Bull., 1994; Cass., 8 December 1992, Bull., 1992). Many provisions of the Covenant are in fact paralleled by a corresponding provision in the European Convention, the direct applicability of which in Belgium is generally accepted by the courts. It would be illogical for the one provision to be directly applicable but not the other.

16. The surprising opinion delivered by the Council of State in 1976, according to which "neither of the two Covenants contains provisions that would be directly applicable in Belgium without the support of other measures of domestic law" (Doc. Parl., House, 1977-78 session, No. 158/1, 29), has never actually been followed in the practice of the Belgian courts.

17. Article 2, paragraph 2, also refers to the implementation of the Covenant through the adoption of legislation; this constitutes another possibility in Belgium, in addition to direct application. With regard to specific legislation relating to specific rights, the Committee is referred to the commentaries on the various rights.

Remedies

(a) Effective legal assistance

18. With regard to the right to effective legal assistance, it should first be recalled that Belgium has acceded to the first Optional Protocol to the Covenant, under which the right of individual petition is recognized. The Protocol was ratified by an Act of 16 March 1994. The right of individual petition has been applicable in Belgium since 17 August 1994.

19. To supplement the information already provided in the first two reports submitted to the Committee, it should be added that, in line with the case-law of the European Court of Human Rights and the Convention on the Rights of the Child, the legislature took account of a number of problematic situations concerning minors when drafting the Act of 2 February 1994 Amending the Protection of Young Persons Act of 8 April 1965. Thus, inter alia, provision is made for the mandatory assistance of a lawyer from the outset of the preparatory

procedure before the juvenile court judge. Article 53, paragraph 1, of the Protection of Young Persons Act, under the terms of which a minor may be kept in a local gaol for a maximum period of 15 days - a measure against which an appeal to the judge is often deemed to be pointless, in view of its short duration - will eventually be repealed by a decision of the Executive (art. 53, para. 3 (2) of the Protection of Young Persons Act), once a number of additional places have been created in the closed Community establishments (see commentary on article 9 of the Covenant).

20. Furthermore, in matters of formal legal (punitive) protection, the distinction between "civil" and "political" rights must be maintained, as must the possibility of bringing the matter before an ordinary judge or the Council of State (see the previous reports). The Act of 19 July 1991 gives the administrative section of the Council of State the possibility of ordering the suspension of annullable administrative acts. The Council of State may also order interim measures, a default fine, or both.

21. The Act of 1 August 1985 set up a committee to grant the victims of intentional acts of violence (or their relatives) financial aid, when the perpetrator is insolvent or unknown. (Such aid does not constitute true legal compensation, but it represents a first step towards a genuine right to damages paid from the public purse).

22. The changes that have taken place in recent months and years with regard to the right to effective legal assistance chiefly concern informal (preventive) legal protection of the citizen against the authorities and public access to the administration (see commentaries on article 20 of the Covenant).

23. There is also provision for a mediation service at various administrative levels. Mention should be made of the federal mediators (Act of 22 March 1995); the mediator of the Flemish Community (Decree of 23 October 1991 and Order of 9 December 1992); the mediator for the Walloon Region (Decree of 22 December 1994, amended by the Decree of 16 February 1995); and the mediators for the federal public enterprises (Act of 21 March 1991 and Royal Decree of 9 October 1992). A number of communes also have their own mediator. The mediator tries to find tailor-made solutions to specific problems. In other words, a distinction must be drawn between his task and that of the professional jurisdictional or administrative organs.

(b) Execution of compensation

24. With regard to the actual execution of legal compensation by the competent authority, one should first note the partial revocation of immunity from execution regarding public property. For such property, immunity from forcible execution, which was long considered "absolute" by court decisions, was rendered more flexible by the decisions of judges of the lower courts and of the Court of Cassation (see Cass., 30 September 1993), and particularly by the Act of 30 June 1994 (which entered into force on 21 January 1995). The Act introduces a number of exceptions to the principle of immunity from execution: first, property declared seizable by the public-law authorities may be seized; secondly, in the absence of such declaration or when the property mentioned therein is not sufficient to pay off the creditor, he may apply to the judge and

arrange for the seizure of such property as is not manifestly necessary to legal persons of public law for the exercise of their tasks or for the continuity of the public service.

25. Some progress may also be noted with regard to the responsibility of the State in matters of judicial interventions. Shortly after the acceptance of the responsibility of the State for interventions by its organs, the Court of Cassation ruled, in two decisions handed down concerning the Anca case (see Cass., 19 December 1991 and 8 December 1994), that the State could be required to pay damages resulting from professional errors committed by magistrates. In the first Anca judgement the Advocate-General of the Court of Cassation declared in his conclusions that when there is a finding against a State by the European Court of Human Rights in Strasbourg and domestic remedies or the nature of the offence do not allow - or only partially allow - for compensation at law, an individual has the right to claim full compensation from the State concerned.

26. It should be pointed out that the above-mentioned developments may give rise to difficulties. Those difficulties call for further reflection. They include, for example, the statutory conditions for the financial aid granted pursuant to the Act of 1 August 1985 (see para. 21 above), which are relatively general and imprecise and are applicable only to a limited number of victims. The competent committee is comparatively little-known to the public. Furthermore, with regard to the new law on forcible seizure of public property, it should be noted that the respective authorities are not obliged to draw up lists of seizable property. If they do not do so, the judge can decide to seize it. The public authority will have to demonstrate that the property in question is necessary to it. The notion of "such property as is not manifestly necessary" is a vague one. It therefore remains to be seen whether judges will apply a broad interpretation of the notion.

Article 3

27. During the period under review several institutional mechanisms were created for the advancement of women. Many legislative measures were also adopted. Additionally, a number of examples taken from the rulings of the highest courts show that the right of women and of men to enjoy equality and non-discrimination is protected by the courts.

Mechanisms for the advancement of women

At federal level

28. In 1992 the State Secretariat for Social Emancipation, the first official structure to be given responsibility for equal opportunities policy, became a separate department within the Ministry of Employment and Labour. In that context an Equal Opportunities Service was set up, with the tasks of promoting initiatives to guarantee equal opportunities for men and women and coordinating policy to secure better integration of women in all areas of life.

29. The Council for Equal Opportunity between Men and Women, set up by the Royal Decree of 15 February 1993, is a consultative body replacing the Women's Employment Commission and the Council for Emancipation. This Council consists of

54 members representing the social partners, the women's organizations, consultative bodies with competence in the fields of cultural and youth policy, family organizations, the political parties in the Government and the "Women's Studies" support services set up within the Scientific Policy Programming Services' social sciences research programme. The Council's objectives are to contribute effectively to the elimination of all forms of direct or indirect discrimination against men and women and to the achievement of equality.

In the Flemish Community

30. The Flemish Community has put in place the following measures:

(a) At legislative level, a Parliamentary Committee on Equal Opportunity and Emancipation has been set up;

(b) At executive level:

A (woman) minister in the Flemish Executive is responsible for equal opportunities policy. This policy is specifically targeted on women, immigrants, homosexuals and disabled people;

An administrative unit attached to the Department of Coordination is responsible for supporting and implementing the policy of the minister (whose post was created by a decision of the Flemish Council of 10 October 1995, and who took office on 1 January 1996);

An Interdepartmental Committee on Equality of Opportunities was set up in 1996;

An official with responsibility for emancipation within the Ministry of the Flemish Community took office on 1 September 1991. She draws up an annual positive action plan and prepares an annual report on the previous year's results;

Posts of "emancipation official" have been created in the Flemish public institutions;

A Standing Committee on Equality of Opportunity for Girls and Boys in Education was set up within the Flemish Education Council by an order of the Flemish government in 1992; its purpose is to promote measures to offer a wider choice of studies to girls in secondary, technical and vocational education;

The Women's Consultation Committee, set up in 1990 within the Economic and Social Council of Flanders, is a consultative body whose membership includes representatives of the social partners and of women's organizations.

(c) At local level, some communes and towns have a commune emancipation council.

In the French Community

31. The Equal Opportunities Service of the French Community, which has been operational since 1985, is a consultative service intended to promote an equal opportunities policy. It has a budget of 1 million Belgian francs in addition to all the services made available to it by the ministry of which it forms part. The Women's Continuing Education Associations are subsidized to the tune of 98 million Belgian francs, or 20.35 per cent of the budget allocated to activities in this field. The two health education movements (services for specialized women teachers) receive 7.07 million Belgian francs. Projects targeted on women and children (immigrant families, training of infant welfare specialists and volunteer workers, brochures) receive about 3.5 million Belgian francs.

32. There are more than 100 sex, marriage and family counselling and information centres in the French Community, most of them subsidized by the public authorities. Women are strongly represented in these centres at all occupational levels (doctors, social workers, psychologists, sexologists, receptionists, etc.).

33. A committee on equal opportunities for boys and girls has been in operation since 1979.

34. As regards aid to families and the elderly, the French Community Commission adopted an order in March 1995 enabling 150 women, with or without special training, to gain access to full-time jobs providing assistance in the home to the elderly and disabled, invalids and persons experiencing social difficulties. In the social aid sector, in-service training of workers has been made compulsory. Consideration is currently being given to introducing training programmes leading on to higher paramedical and social studies.

In the Walloon Region

35. In 1994 a Regional Committee for Women was set up, attached to the Economic and Social Council of the Walloon Region. The establishment of this committee is the result of the granting of new powers tc the Walloon Region in the framework of federalization. It is also the result of the abolition of the Women's Employment Commission, which has been replaced by an Equal Opportunities Council, with a different composition, no longer representative of the Communities and Regions. The Regional Committee for Women is a joint body made up of 16 full members and 16 alternates, all of whom, including the Chairperson and the Vice-Chairperson, are appointed by the organizations representing employers and employees. Experts and representatives appointed by the ministers of the Walloon Region may sit as associate members with a consultative role. The Regional Committee for Women is incorporated in the Economic and Social Council of the Walloon Region and functions like the other committees: its opinions are transmitted to the Bureau of the Council and relayed by the Council, which is responsible for communicating them to the interlocutors concerned.

Statutory guarantees of equality of rights

At federal level

36. The last vestige of discrimination against women was eliminated from the Constitution with the amendment of article 60 (now article 85), which provided

that only males could succeed to the throne of Belgium, in the order of primogeniture. Henceforth, female members of the Royal Family may also claim the right to succeed to the throne.

37. In order to encourage the presence and election of women on electoral lists, the federal legislature adopted the Act of 24 May 1994 Promoting Balanced Representation of Men and Women on Lists of Electoral Candidates (M.B., 1 July 1994). This Act amends the acts organizing elections to the Chamber of Representatives, the Senate, the Walloon Region Council, the Flemish Council, the Council of the Brussels-Capital Region, the Council of the German-speaking Community, the provincial councils and the commune councils, and the election of the Belgian Members of the European Parliament. It provides that:

> "On a list, the number of candidates of the same sex may not exceed two thirds of the total comprised by the sum of the seats to be filled at the election and by the maximum authorized number of alternate candidates.
>
> If the result thereby obtained includes decimals, those of 0.5 and above shall be rounded up, and those below 0.5 rounded down, to the nearest whole number."

In the event of non-compliance with this provision, the offending list is disqualified from the elections by the chief competent electoral office. The Act will not enter fully into force until 1 January 1999. However, for the legislative elections, a quota of three quarters (rather than two thirds) is applicable from 1 January 1996 to 31 December 1998, as well as for any local (commune) elections that may be held before 1 January 1999.

38. It should be stressed that the two-thirds quota is calculated on the basis of the total number of seats to be filled, not of the total number of candidates on the list, which enables a political party to submit a list comprising only candidates of the same sex, provided that the list does not include more than two thirds of the total number of candidates for the seats to be filled. While the text of the Act is worded so as to place men and women on an equal footing, it is obvious that, when the electoral lists are drawn up, it will favour the minority group, namely, women, and that men may be left off a list purely on account of their sex.

39. The Royal Decree of 12 August 1994 provides that, for social elections (elections to works councils and safety and hygiene committees), the number of women on the electoral lists must be proportional to their presence in each category of worker for which a list of candidates is submitted.

40. With regard to the public sector, the Royal Decree of 27 February 1990 makes implementation of positive action compulsory in State administrative bodies and services, public-interest corporations under State jurisdiction, provincial administrative bodies and other provincial services, and in the communes and public undertakings subordinate to them. This action is implemented by means of equal opportunity plans which include measures to remedy harmful effects on women resulting from traditional social situations and patterns of behaviour, and through measures to promote their presence and participation in professional life at all hierarchical levels. The Royal Decree of 24 August 1994

stipulates that the officials responsible for positive action in the public services must have sufficient time at their disposal in which to perform their duties in that connection.

41. At the end of 1993 a report by the committee responsible for general monitoring of equal opportunities plans in the public institutions was circulated to the federal Government, the governments of the Communities and Regions and the joint committee for the public services as a whole. This report reveals that about one in every two federal services (ministries and federal public-interest bodies) has drawn up an equal opportunities plan; that the six services of the Regions and Communities are in the process of drawing up such plans; and that one in five institutions at provincial and local levels has actually implemented a positive action plan.

42. It should also be pointed out that, as regards conditions for access to employment in the commune police, steps have been taken to rectify the inequalities liable to affect women, inter alia at the recruitment stage, and especially when undergoing physical fitness tests. The status of women in the armed forces has also undergone some changes. Thus, the ministerial order of 19 December 1986 (M.B., 27 January 1987) determining the psycho-technical tests and physical fitness tests to be taken by military candidates for the active list was amended by the Royal Decree of 13 November 1991 (M.B., 7 December 1991) establishing the rules applicable when assessing the physical capacities of certain candidates and cadets in the armed forces; but the principle of identical selection criteria for the two sexes has been maintained. The total number of women in the armed forces on 1 January 1996 was 3,147, including 177 officers and 1,001 non-commissioned officers.

43. The Royal Decree of 14 July 1987 provides for the same type of positive action in the private sector, through the establishment of equal opportunity plans. The Royal Decree of 12 August 1993 adds to this the obligation for private enterprises with more than 50 employees to produce an annual report on equality of opportunity for men and women in the enterprise, giving overall figures for the number of men and women employees, for transmission to the works council.

44. On 10 May 1996 the Council of Ministers approved preliminary draft legislation to encourage balanced representation of men and women on bodies with advisory capacity. The text amends the Act of 20 July 1990, which provides that one man and one woman candidate must be put forward for each vacant seat on bodies with advisory capacity.

45. Reports on implementation of the Act of 20 July 1990 show that it has not yielded the desired results. In practice, two candidates are put forward in only about 50 per cent of cases. Sometimes there is not even any awareness that the legislation exists. Consequently, the new preliminary draft law provides for the following modifications:

> In future, the list of candidates will be referred back to the competent minister if the presentation of candidates does not meet the statutory requirements. The seat will remain vacant until the list of candidates complies with the legal requirements;

The consultative bodies to which this legislation applies may not be made up of members more than two thirds of whom are of the same sex.

Existing consultative bodies must adapt their membership to comply with the legislation when mandates are next renewed, and in any case by 31 December 1999 at the latest.

In the Flemish Community

46. Measures adopted include the following:

An order of the Flemish government of 19 December 1990 amended by an order of the Flemish government of 27 February 1992, which regulates the mandatory implementation of positive action plans intended to correct the de facto inequalities adversely affecting opportunities for women in the services of the Flemish government and public-interest bodies attached to it;

An order of the Flemish government of 7 October 1993 on equality of treatment of men and women in access to vocational guidance and training. This order lays down the conditions for vocational training and guidance (M.B., 6 January 1994);

An order of the Flemish government of 22 June defining the developmental and final objectives of ordinary infant and primary education (M.B., 1 September 1994);

An order of the Flemish government of 20 July 1994 establishing measures to implement the full-time secondary education project on "diversification of the choice of courses taken by girls in technical and vocational secondary education" (M.B., 7 October 1994);

An order of the Flemish government of 10 October 1995 concerning the creation of an interdepartmental committee on equal opportunities and an administrative unit for implementation of the equal opportunities policy.

In the French Community

47. Measures adopted include the following:

A French Community decree of 21 June 1993 and its implementing order of 13 December 1993 concerning the feminization of names of occupations, posts, grades or titles make application of this feminization compulsory in documents issued by the legislative and administrative authorities and in educational or research works or textbooks used in institutions of the French Community and when giving notice of an offer of or request for employment;

An order of the government of the French Community of 25 September 1991 establishing measures to promote equal opportunity between men and women in the Commissariat-General for International Relations implements a positive action programme.

Examples of court rulings

48. In the area of social benefits and pensions, the Court of Justice of the European Communities (Van Cant judgment, 1 July 1993) ruled that the Act of 20 July 1990 establishing a flexible age of retirement for employees is discriminatory because it places men at a disadvantage. This Act establishes a uniform age of retirement for men and women (between the ages of 60 and 65), but uses different methods for calculating the number of years each must work in order to gain entitlement to a pension, requiring 40 years' work for women and 45 for men. The argument that allowance must be made for interruptions in women's careers and earnings was rejected. The Court of Arbitration ruled that this argument, based on the principle of "positive discrimination" to take account of the legacy of the past, cannot be accepted when it is limited to an overall comparison of the situation of men and women, and fails to establish in what way the measure being criticized contributes to reducing a disadvantage in the case under consideration (C.A., 14 July 1994, No. 61/94, M.B., 9 August 1994). The provision giving entitlement to a guaranteed income for elderly persons to men from the age of 65 and to women from the age of 60 was deemed to be discriminatory.

49. The Court of Justice of the European Communities (judgment of 17 February 1993, Commission v. Belgium) also found against Belgium on the grounds that a supplementary pre-pension allowance, provided for in a national collective agreement, was limited to men. In two decisions the Court of Arbitration rejected the argument that a measure which makes no distinction founded directly on sex and which exclusively or principally affects women constitutes discrimination, contrary to the rule of equality of treatment (decision No. 17/91 of 4 July 1991 concerning a reduction in the survivor's pension for widows and widowers also receiving a retirement pension; decision No. 74/93 of 21 October 1993 concerning a special employer's contribution in connection with employment of involuntary part-time workers).

50. Concerning night work, Belgian law (Labour Act of 16 March 1971, arts. 35-38 bis) contains a general prohibition on night work for men and women, together with a large number of exceptions. The exceptional régimes distinguish between the sexes chiefly with regard to the procedure for adoption of exemptions and the duration of the night work authorized. The Court of Justice of the European Communities (Minne judgment, 3 February 1994) ruled that this differentiation violates the rule of equality in that it is not justified by the need to protect women, with particular regard to pregnancy and motherhood.

51. On equality of remuneration, article 130 of the Act of 4 August 1978 establishes that provisions contravening the principle of equality of treatment shall be deemed invalid. In several decisions (those of 23 December 1991, 17 January 1994, 27 January 1994 and 20 June 1994) concerning end-of-career payments resulting from a collective labour agreement that were granted only to men, the Court of Cassation found that the invalidity did not extend to the entire provision granting the payments, but only to that part of it excluding women. In other words, equality is not restored by the withdrawal of advantages from the advantaged sex, but only by their extension to the disadvantaged sex.

52. Article 319 (3) of the Civil Code makes recognition of an unemancipated minor by the father conditional on the prior consent of the mother. In so doing

it establishes a differentiation of treatment between the mother and the father. The Court of Arbitration was called upon to rule on this matter on two occasions. In its decision No. 39/90 of 21 December 1990, the Court ruled that, inasmuch as it makes the admissibility of recognition of an unemancipated minor by the man whose paternity is not contested conditional on the prior consent of the mother, article 319 (3) of the Civil Code violates articles 6 and 6 bis (now articles 10 and 11) of the Constitution (principles of equality and non-discrimination).

53. The Court confirmed its position in its decision No. 63/92 of 8 October 1992, adding that article 319 (3) of the Civil Code also violated articles 6 and 6 bis of the Constitution in that, when the case is referred to the court, it gives the court the power to assess whether the recognition may take place, even when it is not proven that the applicant is not the father.

54. The fourth paragraph of this provision grants the court, when the mother is unknown, deceased or unable to express her will, the power, on the basis of its assessment of the child's best interests, to annul recognition of an unemancipated minor by a man whose biological non-paternity is not proven. The Court of Arbitration also considered that this provision violated the principles of equality and non-discrimination (decision No. 62/94 of 14 July 1994).

55. As these decisions were handed down on preliminary issues, they have only limited authority. Thus, the statutory provisions referred to are still in place and continue to form part of the legal order.

Article 4

56. In addition to the information provided in the two previous reports of the Belgian Government concerning article 4 of the Covenant (CCPR/C/31/Add.3, paras. 51-65 and CCPR/C/57/Add.3, para. 65), the following information should also be noted.

57. Article 4 of the Covenant, like article 15 of the European Convention on Human Rights, states that neither war nor any other public emergency which threatens the life of the nation may authorize any derogation from the "core" human rights, and in particular the provisions prohibiting torture, slavery, the right to life, etc.

58. When adopting the Act of 16 June 1993 concerning the prosecution and punishment of serious breaches of the Geneva Conventions of 12 August 1949 and of Protocols I and II of 8 June 1977 Additional to the Geneva Conventions (annexed, M.B., 5 August 1993), the Belgian legislature included a specific provision covering irreducible human rights. Thus, paragraph 1 of article 5 of the Act of 16 June 1993 unequivocally provides that "No interest, no necessity of a political, military or national nature, may justify, even in the context of reprisals, the offences covered by articles 1, 3 and 4, without prejudice to the exceptions referred to in paragraphs 9, 12 and 13 of article 1." Paragraph 1 of article 5 thus includes the general principle of humanitarian law whereby certain basic minimum humanitarian standards must be respected in all circumstances - a principle set forth in article 15, paragraph 2 of the European Convention on Human Rights, in article 4 of the Covenant, in article 60 (5) of

the Vienna Convention on the Law of Treaties, in article 75 of Protocol I Additional to the Geneva Conventions of 12 August 1949, and in article 5 of the Code of Conduct for Law Enforcement Officials (resolution adopted by the United Nations General Assembly on 17 December 1979).

Article 5

59. The remarks relating to article 5 contained in the initial report of Belgium (CCPR/C/31/Add.3, paras. 66 and 67) call for no further comment.

Article 6

Death penalty

60. The Death Penalty (Abolition) and Serious Penalties (Amendment) Act was adopted on 10 July 1996 (M.B., 1 August 1996). The abolition is absolute and applies to all types of offence, committed in all types of situation. The Act also totally does away with the outdated and ambiguous concept of "hard labour" and replaces it by the more neutral concept of "rigorous imprisonment", which thus becomes the generic name for any custodial penalty pronounced in criminal matters for an offence under the ordinary law. Lastly, the Act harmonizes long-term serious penalties more fully, by abolishing the distinction between ordinary detention and extraordinary detention.

61. Abolition of the death penalty will enable Belgium to ratify international instruments such as the Second Optional Protocol to the International Covenant on Civil and Political Rights, Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty, and the European Convention on Extradition.

Commencement and termination of life

62. On the question of the commencement of life, the Court of Arbitration declared, in the context of an application for annulment of the Belgian Act of 3 April 1990 on interruption of pregnancy (M.B., 5 April), that "while the obligation to respect life obliges the legislature to take steps also to protect the lives of unborn children, it cannot be deduced from this that the legislature is obliged to treat children once born and unborn children in an identical manner". (C.A., 19 December 1991, No. 39/91, M.B., 24 January 1992.) The Court of Cassation took a more decisive view, affirming that the right to life, as recognized in article 2 of the European Convention on Human Rights, implies the protection of the life of the child even before birth (Cass. 22, December 1992, Revue de droit pénal, 1993, 650-652).

63. The thorny problem of termination of life continues to be the subject of parliamentary debate, but has not passed beyond the stage of proposals for legislation (see proposed legislation on requests for interruption of life, tabled by Mr. Monfils, Doc. Parl., Senate, S.O. 1994-1995, 25 January 1995, doc. 1290-1; proposed legislation on incurable patients' right to therapeutic dignity, tabled by Mr. Serge Moureaux, Doc. Parl., House, S.O. 1995-96, 13 October 1995, doc. 121/1).

64. Mention should also be made of the setting up, under a cooperation agreement concluded on 15 January 1993 between the State and the Communities, of a consultative committee on bioethics. Under article 1 of this agreement, the committee exercises both an advisory and an informative role. It gives its opinion, on its own initiative or at the request of the persons or authorities empowered to bring matters before it, on biological, medical and health questions, whether they concern individuals, social groups or society as a whole. The ethical, social and legal aspects of the problems, and especially their human rights aspects, are considered. Thus, in some respects the committee's activities touch on the right to life. The cooperation agreement setting up this committee was approved by the Act of 6 March 1995 (M.B., 15 June 1995). The committee is now operational. Lastly, it should be pointed out that the Royal Decree of 12 August 1994 supplements the rules applicable to hospitals by requiring every hospital to set up a "local committee on hospital ethics".

Article 7

Measures for the removal of aliens

65. Paragraph 9 of General Comment 20 on article 7, adopted by the Human Rights Committee at its forty-fourth session, affirms that States parties must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or refoulement. In application of this rule, the Council of State has reiterated on a number of occasions that it is forbidden to return an alien who has been refused the status of political refugee to his country of origin, where there are substantial grounds for believing that he would be subjected to inhuman or degrading treatment if returned (Council of State (C.S.), 21 June 1991, No. 37,289, Revue de droit des étrangers 1991, p. 343).

66. Regardless of the risk incurred by the individual in the State to which he is returned, the Council of State decided that it would constitute inhuman treatment to return to Turkey a widowed 69-year-old with no family in Turkey who was suffering from a serious medical condition (C.S., 9 November 1994, No. 50,103, Revue de droit des étrangers 1995, p. 43; see also C.S., 11 February 1994, No. 46,098, Revue de droit des étrangers 1994, p. 31; C.S., 8 December 1993, No. 45,191, Revue de droit des étrangers 1994, p. 146).

67. Article 57, paragraph 2 (2) of the Public Social Welfare Centres (Organization) Act of 8 July 1976 places limits on the right to social welfare of aliens who have been issued with a final order to leave the territory. The Court of Arbitration decided that that limitation constitutes neither torture, nor inhuman treatment, nor serious degradation or humiliation (C.A., 29 June 1994, No. 51/94, M.B., 14 July; see too, for a continuation of this case-law, Cass., 4 September 1995, Journal des tribunaux du travail 1996, p. 46).

Deprivation of liberty

68. From 14 to 23 November 1993 Belgium was visited by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

(CPT). The Committee visited premises of the commune police and Gendarmerie, custodial centres for foreign nationals, and prisons.

69. Belgium agreed to publish the report issued by the Committee following its visit (document CPT/Inf (94) 15 of 14 October 1994), as well as the interim report (CPT/Inf (95) 6) of 3 May 1995 containing the response of the Belgian Government. On 21 February 1996 the follow-up report (CPT/Inf (96) 7) was also made public.

70. With regard to the allegations of ill-treatment by commune police and the Gendarmerie during questioning or interrogation, referred to in the report by the CPT, Belgium drew attention to various provisions, already existing or in the course of preparation, the purpose of which is to rectify the situation. These include:

> Article 37 of the Police Functions Act of 5 August 1992 (M.B., 22 December), pursuant to which any police official may, in the exercise of his administrative or judicial police duties, and having regard to the risks involved therein, have recourse to force, but only in order to pursue a legitimate objective which could not otherwise be achieved. Moreover, any recourse to force must be reasonable and proportionate to the objective pursued;
>
> A Royal Decree concerning minimum standards of safety and hygiene in commune police and Gendarmerie cells, to be published in the Moniteur belge.

71. With regard to accommodation conditions in holding centres for aliens, while the Committee heard no allegations of torture or serious ill-treatment, it nonetheless noted some shortcomings in the treatment of aliens in these centres, whether concerning conditions or the attitude of the gendarmes at Brussels National Airport (e.g., allegations of violence, particularly when aliens are escorted to aircraft). In its interim and follow-up reports the Belgian Government placed special emphasis on the opening of new closed centres for illegal aliens; it also gave a detailed description of reception conditions in the various centres, and of the improvements introduced since the Committee's visit. At the regulatory level, two projects are being studied, one of them concerning the functioning of the closed centres as a whole, the other including, inter alia, instructions for escorts in cases of repatriation.

72. With regard to prison establishments, the European Committee insisted that priority must be given to implementation of measures to reduce overcrowding and improve prisoners' living conditions.

73. In a circular of 4 July 1994, the Minister of Justice also prolonged indefinitely the emergency and ad hoc measures to remedy overcrowding in closed establishments periodically taken for a limited period. That circular basically extends the measures contained in the circular of 4 March 1994. Its essential features are provisional early release on parole of prisoners serving short prison sentences or a decision on the date of their eligibility for parole. Application of these principles has enabled several hundred prisoners to be released. Thus, proposals for individual pardons are submitted to the Head of State whenever a prisoner's personal file warrants such a measure. In addition

to these individual measures, the effect of which is to shorten the duration of imprisonment or to obviate the need for it altogether, the Head of State also occasionally grants collective pardons. Statistics for the year 1994 provided by the Prisons Administration's service responsible for pardons reveal the following situation:

Applications for pardon: out of a total of 3,629 applications, 2,817 were processed, 1,008 of which were granted and 1,809 rejected;

Provisional release awaiting pardon: 1,623 releases in application of the ministerial circular of 4 March 1994 (extended on 4 July 1994); 23 releases on application for pardon or relating to "inoperative" detentions.

According to the Council of State, the fact of having been subjected to strict solitary confinement for an indefinite period does not in itself constitute inhuman or degrading treatment; it is for the appellant to furnish concrete examples of ways in which the régime is equivalent to such treatment (C.S., 4 March 1992, No. 38,910).

Miscellaneous

74. According to the Court of Arbitration, interruption of pregnancy, referred to in article 350, paragraph 2, of the Penal Code, does not constitute an act of torture or cruel, inhuman or degrading treatment or punishment within the meaning of article 7 of the Covenant (C.A., 19 December 1991, No. 39/91, M.B., 24 January 1992).

75. The interim relief judge, who hears urgent interlocutory applications, is the natural choice of judge to order measures to put an end to inhuman and degrading treatment (Trib. civ. Brussels - réf. - 25 November 1993, Jurisprudence de Liège, Mons, Bruxelles 1994, p. 656, and the note by P. Martens: "De l'interdiction d'infliger des sévices à l'obligation de protéger la dignité humaine").

76. The Court of Cassation has affirmed on several occasions that a death sentence pronounced by a court of a country in which there is provision for that penalty is not per se inhuman or degrading in nature (Cass., 29 January 1992, Bull. and Pas. 1992, I, No. 281).

77. Regarding the regulation of medical experiments, mention should be made of the amendments of 22 September 1992 (M.B., 5 December 1992) to the Royal Decree of 16 September 1985 concerning the standards and protocols applicable to testing of medicaments for human use.

Article 8

78. Military service was compulsory until December 1992. Under article 4 of the Military Service Acts coordinated on 30 April 1962, from the year in which he was 16 years old, every Belgian was enrolled on the levy list for the year during which he would attain 19 years of age. A deferment could be granted in the circumstances provided for in article 10 of those Acts; enlistment before

call-up was also possible. In the latter case the conscript was accepted for service in the contingent for the year in which he turned 18, provided he was passed fit for service. Article 2, paragraph 4, of the Military Service Acts coordinated on 30 April 1962 provides that in time of war "conscripts shall form part of the recruitment reserve from 1 January of the year during which they reach the age of 17 until such time as they are called up or their military obligations are extinguished. That reserve may be called up for service only in case of war or when the territory is threatened."

79. The Act of 31 December 1992 limiting the scope of the old legislation to conscripts from the 1993 and previous levies, henceforth suspends any obligation to perform military service.

80. With regard to prison labour, it should be pointed out that throughout the country's various establishments special efforts are being made to increase the possibilities for providing prisoners with work. Furthermore, special training, ranging from basic literacy to advanced studies, together with vocational training in various fields such as bricklaying, electrical installation and maintenance, book-keeping and administration, are organized locally in collaboration with outside participants (social welfare institutes, vocational training enterprises, regional authorities, etc.). For further information on this subject, the Committee is referred to page 46 of the interim report and pages 14 and 15 of the follow-up report prepared by Belgium following the visit by the European Committee for the Prevention of Torture (CPT) in November 1993.

81. Although in principle child labour continues to be prohibited in Belgium, a new Act dealing with this question entered into force on 1 February 1993, authorizing, through an exemption granted by the competent minister, work by children in very specific cases such as theatrical roles, fashion parades and, recently, advertisements. The new Act establishes that the work must not have an adverse effect on children's educational, social or intellectual development, or endanger their psychological and moral integrity, or be harmful to their well-being. The broad scheme of this Act of 5 August 1992 is set forth in paragraphs 452 to 455 of the first report on implementation of the provisions of the Convention on the Rights of the Child (CRC/C/11/Add.4), which Belgium submitted to the Committee on the Rights of the Child on 12 July 1994.

82. In the case of young persons who have committed certain types of act characterized as offences, the juvenile court may decide, under the terms of article 37 of the Act of 8 April 1965, that the rendering of an educational or charitable service will suffice. In that case, the judge may order the minor to perform a number of hours' work in various public or public-interest agencies (see doc. CRC/C/11/Add.4, paras. 434-439).

Article 9

Lawfulness of arrest and detention

83. Belgian law provides for two main types of arrest by the forces of order: administrative arrest and judicial arrest.

(a) Administrative arrest

84. Articles 31 to 33 of the Police Functions Act of 5 August 1992 harmonized and extended the existing provisions concerning administrative arrest. Under those provisions, a policeman may, in case of absolute necessity, administratively arrest a person who is causing an obstruction, causing an actual breach of the peace or preparing to commit certain offences, or, with a view to making him desist, a person committing certain offences. Article 22 of the Act also permits administrative arrests when dispersing crowds in the context of the maintenance and restoration of public order.

85. Administrative arrest cannot last longer than the circumstances warranting it, and can in no case ever exceed 12 hours. Where a person is concurrently subjected to administrative and judicial arrest for the same acts, the duration of the administrative arrest is included in the 24-hour period of deprivation of liberty to be taken into consideration in application of the Pre-trial Detention Act. The Act provides for the obligation to record administrative arrests in a special register and to inform the bourgmestre at the earliest opportunity.

86. Article 34 of the same Act deals with identity controls. Any person who cannot or will not establish his identity may be held for the period necessary for the establishment and verification thereof. However, that period may in no case exceed 12 hours. The person being controlled may in some circumstances be asked to accompany the police official to the police station or gendarmerie. He will have to wait there under surveillance until his identity is established (in appropriate premises, but not necessarily in a cell or provisional lock-up). If recourse to force is necessary, he may be confined to a cell, and thus administratively arrested, in which case the fact will then be recorded in accordance with article 33.

(b) Judicial arrest

87. The regulations covering pre-trial detention were entirely overhauled by the Act of 20 July 1990 (M.B., 14 August 1990), which entered into force on 1 December 1990.

88. Practically every aspect of arrest and pre-trial detention in criminal matters was brought together under this Act; only pre-trial detention in connection with customs and excise matters and the pre-trial detention of military personnel and minors are still covered by separate regulations. Additionally, the provisions concerning compensation in the event of "inoperative" or unjust pre-trial detention were removed and consolidated in a separate Compensation for Inoperative Pre-trial Detention Act of 13 March 1973. Lastly, a number of issues not covered in the Pre-trial Detention Act (such as the provisions concerning body searches) were transferred to the Code of Criminal Investigation.

89. The main features of the new act are as follows:

(a) The primary concern of the legislature was to emphasize the exceptional nature of pre-trial detention. That emphasis is achieved, inter alia, by:

Raising the threshold of the prison sentence on the basis of which the act characterized as an offence can justify the issuance of an arrest and detention warrant (art. 16, para.1);

Abolition of the de jure arrest and detention warrant used under the former régime;

A requirement for stricter criteria for detention, set out in the reasons cited in the warrant;

Introduction of alternative measures.

(b) The legislature intended to strengthen guarantees of individual rights. This can be seen, inter alia, from the procedure, which was made more adversarial; and from the introduction of a rapid annulment procedure, improved provision of information to the accused and, especially, improved contact between the accused and his counsel through the abolition of the prohibition on communicating with persons other than the lawyer (art. 20 of the Pre-trial Detention Act).

90. The implications of the new law for prison establishments were spelled out in circulars (CM 1558/VI of 28 November 1990, 1560/VI of 18 December 1990 and 1561/VII of 21 December 1990). The last of these specifies that untried prisoners held incommunicado are not authorized to contact their lawyer even by telephone, despite the lifting of the prohibition on communicating freely with their lawyer. This can be done only through the intermediary of a member of the prison staff. Lastly, as regards the right to communicate, it should be pointed out that the Royal Decree of 26 September 1995 amended the list of authorities with whom the prisoner may correspond (General Regulations for Prison Establishments, art. 24). First, the list was adapted to take account of the new institutional situation in Belgium (i.e., the Communities and Regions); secondly, the Presidents of the Court of Arbitration and the Chairman of the European Committee for the Prevention of Torture (CPT) were added to the list.

Court rulings

91. In recent years persons held in pre-trial detention have repeatedly applied to the interim relief judge to safeguard their fundamental rights. The claim by one detainee that the strict régime of isolation and the intensified surveillance to which he had been subjected during his pre-trial detention should be considered as inhuman and degrading treatment (within the meaning of article 3 of the European Convention on Human Rights) was dismissed by the judge: his complaint was rejected, partly because the isolation imposed was not total, and partly because it was not demonstrated that the intensified surveillance had adverse consequences for the claimant's physical or psychological health (Kg., Brussels, 10 January 1991, Journal des procès 1991, No. 189, 27). However, the application by a detainee for transfer, brought in interim relief proceedings because he felt threatened by his fellow detainees and consequently did not dare leave his cell, was admitted by the judge, who deemed the physical and psychological health of the individual in question to be at risk and ordered his immediate transfer (Kg. Arlon, 11 July 1991, Journal des tribunaux 1991, 800).

92. With regard to detention during extradition proceedings, it should be pointed out that the lawfulness of the detention is examined in the first phase of extradition, during which the arraignment chamber is called upon to enforce the arrest and detention warrant issued by the foreign authority. The alien has a right to lodge an appeal against the decision of the arraignment chamber before the Chambre des mises en accusation (indictment division), whose decisions are subject to an appeal to vacate. He is thus able to take proceedings in accordance with article 5 (4) of the European Convention on Human Rights. On the other hand, no specific court exists in which the "proceedings" referred to in article 5 (4) of the European Convention may be heard during the second phase of extradition, when the alien is at the disposal of the executive authorities. Accordingly, it is the interim relief judge who is competent to decide on the lawfulness of the detention during this second phase of the extradition procedure. In the State of Belgium v. Essenn Husseyin case, the judge nevertheless rejected the application on the grounds of absence of a legitimate interest, as the applicant had been extradited in the mean time (Civ. Brussels, 11 October 1994). In connection with the extradition of two Basques to Spain, the Brussels Court of Appeal considered that, having regard to the length of the detention, there was a flagrant irregularity on the part of the administration (Brussels Court of Appeal, 7 December 1994).

93. It should also be mentioned that in view of the small number of places available in Social Protection Establishments (EDSs) located in the south of the country, over the past few years internees have had to spend several months in prison psychiatric annexes until it has been possible to transfer them to the EDS designated by the competent Social Protection Committee.

Measures concerning minors

94. The Protection of Young Persons Act of 8 April 1965, as amended by the Act of 2 February 1994, was again amended on 30 June 1994. This amendment further strengthens the exceptional nature of the measure, provided for in article 53 of the Act, whereby young persons may be held in a local gaol for 15 days. The conditions for application of this interim measure were amended as follows. Minors over the age of 14 must be suspected of an act punishable by a one-year mandatory custodial penalty or by a more serious penalty. The measure can be ordered only once by the juvenile court in the course of the same proceedings. If the young person concerned commits further offences subsequent to being placed in gaol, the Public Prosecutor's Office may either open a new file or make further submissions to the juvenile court judge. The time limit for the appeal decision is reduced to five working days from the notice of appeal. In order to respect this particularly binding provision, the time limit for issuing the summons to appear has been reduced to one day. The interim custody measure may be accumulated with the prohibition to communicate provided for in article 52, new paragraph 3, of the Act. In addition to these new guarantees, it should be mentioned that this is only a temporary solution and that article 53 is eventually to be eliminated entirely from our legislation. The infrastructure currently placed at the disposal of the judicial authorities by the Communities is still inadequate. This is why the article in question cannot be repealed immediately.

95. Furthermore, it should be pointed out that procedural guarantees in juvenile courts have also been improved. The new Act introduces a number of

measures the result of which will be to improve the legal status of minors, especially during the preparatory phase of the procedure.

96. First, the Act explicitly guarantees the right to a hearing. New article 52 ter, paragraph 1, sets forth a mandatory requirement for minors of 12 years of age to be heard by the juvenile court judge before any interim measure is taken, unless particular reasons make that impossible. The minor must also be heard in disputes between persons exercising parental authority over him (new art. 56 bis).

97. Under article 52 ter, paragraph 2, the minor has the right to be assisted by a lawyer whenever he appears before the juvenile court. Henceforth, he also has the right to legal assistance during the preparatory phase of the proceedings. If he has no lawyer, one is assigned to him (art. 54 bis). The order imposing an interim measure must set forth the reasons for so doing (new art. 52 ter, para. 3). Furthermore, the duration of the preparatory procedure is limited in principle to a maximum of six months (new art. 52 bis).

98. The interim measure consisting of confinement in a closed educational régime is made subject to additional procedural guarantees (new art. 52 quater). Lastly, the right to consult the case file has been extended: from now on the minor and his lawyer may acquaint themselves with the file even when an interim custody measure is required (art. 55, para. 2).

Measures for the protection of the mentally ill

99. The Protection of Mentally Ill Persons Act of 26 June 1990, which repealed the Act of 18 June 1850 relating to the mentally ill, provides for deprivation of liberty in the circumstances set forth below. The governing principle is that liberty is the rule and confinement the exception. It introduces a judicial control of deprivation of liberty of the mentally ill.

100. Deprivation of liberty is a possibility only in the case of a mentally ill person whose state seriously jeopardizes his own health and safety or constitutes a serious threat to the life or the person of others (art. 2). In such cases, in the absence of any other appropriate treatment, the court may decide to order the patient to be placed under observation in a psychiatric unit (art. 4). Any person concerned may apply to the justice of the peace for that purpose. The application must be accompanied by a detailed medical report prepared by a doctor unconnected with the families of the patient and the applicant and the psychiatric unit in which the patient is placed (art. 5). In an emergency the crown procurator may decide that a patient is to be placed under observation in a psychiatric unit. He must address the application for placement under observation to the justice of the peace within 24 hours. Thereafter the normal procedure resumes its course (art. 9).

101. After the patient has been assigned a lawyer, the justice of the peace must visit the patient, who may receive the assistance of a lawyer, a doctor or a confidential adviser. The justice of the peace gives a ruling within 10 days of the filing of the application (art. 7). The period of placement under observation may not exceed 40 days. Account must be taken of that time limit when treating the patient. The patient is allowed out, with the doctor's authorization and on his responsibility (art. 11). The justice of the peace, the

crown procurator and the doctor in charge of the unit may terminate the placement under observation prematurely (art. 12). No later than 15 days before the end of the placement under observation, the director of the establishment may request its extension. The justice of the peace may order an extension for a maximum period of two years (art. 13). That term is renewable. If it is not renewed, the patient has the right to leave the establishment (art. 14). During an extension of the placement the doctor in charge of the unit may decide to prescribe a period of readjustment as an out-patient, for a maximum period of one year (art. 16). The extension of placement is terminated on a decision by the doctor in charge and on completion of the period of readjustment. The original applicant may contest the decision to end the extension of the placement (art. 19). The justice of the peace may at any time review the measures taken, either of his own motion or at the request of the patient or of any other person concerned (art. 22). All court decisions taken under the provisions of the Act may be subject to an appeal to the court of first instance by the patient, his lawyer or his legal representative, as well as by all the parties to the case (art. 30). The Act also establishes a similar procedure for mental patients who can be cared for in the family environment (arts. 23 et seq.).

Article 10

102. The Government of Belgium refers the Committee to the information provided on article 7 of the Covenant and to the interim and follow-up reports it prepared in response to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Belgium from 14 to 23 November 1993 (see annex).

103. In recent years the General Regulations for Prison Establishments have been amended or expanded in several respects. The main amendments concerning the legal status of prisoners relate to release on parole and to high-security wings.

Changes in the procedure for release on parole

104. In 1991 the procedure for granting release on parole was amended so as to render the decision-making process rather more transparent, to give the prisoner fuller information and to enable him to participate officially in the procedure (Royal Decree, 4 April 1991, M.B., 26 April 1991). A few further minor adaptations were introduced in 1993 (Royal Decree, 25 June 1993, M.B., 17 July 1993). These new regulations improve the legal status of prisoners eligible for parole on two levels: first, by having the prison staff conference consider the case; and secondly, by consulting with the prison's administrative board with regard to the granting of parole.

105. At the level of the staff conference, there is a new mandatory requirement to inform the prisoner and his lawyer, at least 10 days beforehand, of the date of the staff conference meeting at which the application for parole is to be considered (new art. 116, para. 4, of the Royal Decree). The lawyer is authorized to consult his client's personal file in the prison registry (new arts. 37 and 117). He may submit a statement of case, which must be appended to the case file, to the staff conference (art. 116, para. 3). The prisoner himself

may be heard by the staff conference and he is informed as fully as possible of the situation with regard to his imprisonment (new art. 116, paras. 1 and 2). The prisoner, his counsel, his family and his close relatives are, at their request, informed of the decision taken by the staff conference, and of the reasons for that decision (new art. 116, para. 5).

106. The lawyer may participate directly in the administrative board: he is entitled, if he so requests, to be heard by the board before it considers his client's case (new art. 118, para. 1). The lawyer may also consult his client's personal file up to 10 days before the administrative board meets (new art. 118, para. 2).

107. For the first time the prisoner, and especially his lawyer, are entitled to play a more active role in the procedure, long regarded as extremely opaque, for taking a decision concerning release on parole. However, these innovations constitute only a first, very limited, step towards a real improvement in the legal status of prisoners. The decision regarding parole remains entirely a matter for the administration, and there is no independent judicial control over the granting or reconsideration of this means of executing custodial penalties.

108. The Minister of Justice is currently working on a more comprehensive review of the procedure for granting release on parole.

Introduction of high-security wings

109. By a Royal Decree of 22 October 1993 (M.B., 28 December 1993) a new article 106 bis was incorporated in the Royal Decree, providing a legal base for the so-called "high-security wings".

110. In actual fact, high-security wings have in any case long been a feature of Belgian prisons. For instance, the "U Block" at Lantin prison was used as a special security section where dangerous prisoners were subjected to heightened surveillance and a strict régime. On two occasions to date the interim relief judge has deemed this strict régime of solitary confinement to be unlawful, for lack of a legal basis, and contrary to article 3 of the European Convention on Human Rights (Kg. Liège, 9 November 1987, Journal des procès 1987, No. 117, 28 and note by J.-M. Dermagne; Kg. Liège, 23 December 1988, Journal des tribunaux 1989, 164 and note by J. Détienne). In consequence, U Block was closed down.

111. The Royal Decree of 1993 attempts to respond to these requirements. The legislation sets out the criteria on the basis of which a prisoner may be transferred to a high-security wing, specifies that the placement may not last more than six months, and provides that the stay in the high-security wing must be regularly reviewed. The statutory regulations were subsequently supplemented by the rules relating to the régime applicable (Royal Decree, 6 February 1995, M.B., 10 June 1995). The statutory provisions were subsequently implemented by means of circulars (CM 1627/V of 15 July 1994, later superseded by CM 1648/V of 15 June 1995).

112. In spite of this statutory regulation, high-security wings continued to provoke intense criticism. An attempt was made to use interim relief proceedings to contest the legitimacy of incarceration in the high-security wing at Lantin prison. However, the judge rejected the applicant's argument based on

article 40, paragraph 2 of the Constitution, as well as one based on article 3 of the European Convention on Human Rights (Kg. Liège, 30 January 1995, Journal des procès 1995, 26 and note by R. Ergec).

113. The legitimacy of the Royal Decree of 1993 has been contested in the Council of State on similar grounds, by the International League for Human Rights. The application for suspension of the Royal Decree was rejected at first instance (C.S. No. 47,472, 16 May 1994, Revue trimestrielle des droits de l'homme 1994, 587). In 1996 the Royal Decree was finally repealed, not on the basis of article 40, paragraph 2, of the Constitution or of article 3 of the European Convention on Human Rights, but directly on the basis of the Covenant, and in particular its article 10, paragraphs 2 and 3. The Royal Decree was deemed to be contrary to that provision because no provision had been made for segregation of convicted prisoners, unconvicted prisoners and minors (C.S. No. 58,310, 21 February 1996, Journal des procès 1996, No. 300, 8). Following that decision, the Minister of Justice undertook to review the situation in the context of a parliamentary debate.

Court rulings

114. In addition to the statutory measures concerning detention and execution of penalties referred to here, a number of decisions in which prisoners alluded to the violation of fundamental rights may also be cited.

115. A prisoner who had been shackled to his bed by the wrists and ankles during treatment in an external hospital applied to the justice of the peace for compensation from the Belgian State. The application was based, inter alia, on articles 3 and 8 of the European Convention on Human Rights and on articles 7 and 10 of the Covenant. The judge considered that, in the circumstances, such a measure was not justifiable, and awarded the applicant one franc in respect of non-material damage, to be paid by the State (Justice of the Peace of Woluwe-St.Pierre, 7 January 1992, Journal des procès 1992, No. 214, 28 and note by M. Neve).

116. A prisoner suffering from AIDS complained that his right to appropriate medical care was not respected during his detention and requested his immediate release in interim relief proceedings. His application was rejected at first instance, the judge having ruled that no fundamental right in the matter of medical care had been violated (Kg. Oudenaarde, 23 January 1992, Vl.T.Gez. 1992-93, 197). That ruling was confirmed on appeal: the prison establishments' medical infrastructure was deemed to be adequate to provide care for patients of this type; furthermore, a decision concerning early release on humanitarian grounds was deemed to be a purely political question and solely a matter for the Minister of Justice (Ghent, 6 November 1992, Vl.T.Gez. 1992-93, 202 and note by T. Balthazar). A few months after this decision, the Minister of Justice granted a pardon to the detainee concerned and remitted his sentence.

117. In 1995 an interim relief judge acknowledged that in addition to the prisoners themselves, associations for the defence of human rights in general, and for the defence of the rights of detainees in particular, may also join in the proceedings when the objectives set out in their statutes are violated. A complaint by the International League for Human Rights concerning inhuman living conditions in the overcrowded prison at Namur was declared admissible by the

judge (Kg. Namur, 7 December 1993, Rev. Liège 1994, 29, confirmed on appeal: Liège, 29 April 1994, Journal des procès 1994, No. 262, 27, and note by R. Ergec). However, the application, which was based on article 3 of the European Convention on Human Rights, was rejected on the merits because the judge considered that the issue was not one of interim measures designed to safeguard rights that were under threat, but one of a more structural nature, namely, the widespread overcrowding in prisons, which must be resolved not by the judge but by parliament (Kg. Namur, 7 February 1995, Journal des procès 1995, No. 277 and note by R. Ergec).

118. Lastly, it should also be mentioned that application of the strict régime of solitary confinement was also submitted to the Council of State for a ruling. However, the Council of State did not accept recourse to article 3 of the European Convention on Human Rights, and deemed the measure to be justified in view of the behaviour of the individual concerned (C.S., Vanoirbeek, No. 38,910, 4 March 1992).

Article 11

119. The remarks relating to article 11 contained in paragraphs 217 and 218 of the initial report of Belgium (CCPR/C/31/Add.3) call for no further comment.

Article 12

120. In addition to the information provided by Belgium in paragraphs 23 et seq. of its report on implementation of the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD/C/260/Add.2), transmitted to the Committee in December 1995, the following comments concerning application of this provision in Belgium are of importance. All relate to restrictions on or conditions governing the liberty of movement and freedom to choose their residence of non-European-Community aliens in Belgium, and in particular of asylum seekers.

Compulsory registration of asylum seekers in a specified commune

Principle

121. Article 54 of the Belgian Act of 15 December 1980 on the entry, temporary and permanent residence and removal of aliens, as amended by article 15 of the Act of 6 May 1993, now provides that the minister whose portfolio includes the entry, temporary and permanent residence and removal of aliens (namely, the Minister of the Interior) or his representative (in practice, the administration of the Aliens Office) may "determine the place of registration" of certain aliens seeking asylum. The Royal Decree of 23 December 1994 (M.B., 14 March 1995, p. 5,700) establishes the criteria for a harmonious distribution of asylum seekers among the country's communes, as prescribed in the above-mentioned article 54, which lays down that the registration of asylum seekers shall take account, firstly, of the level of occupation of the reception centres for asylum seekers, and secondly, of a harmonious distribution among the communes (art. 54, para. 1 (3)). Two objectives were behind the adoption of this provision:

The objective of a more harmonious distribution of refugees seeking asylum relates to the fact that the number of asylum seekers has increased greatly in recent years, and that for the most part they have established themselves in only a small number of communes, and especially the large urban centres. The towns and communes affected by this very considerable influx are frequently no longer able to offer these asylum seekers a decent welcom[illegible] They have thus called for effective solidarity on the part of the other communes - solidarity which the State has endeavoured to organize;

The other objective of article 54 of the Act of 15 December 1980 is to put an end to unlawful refusals by certain communes to register asylum seekers. Now that the Minister or his representative have authority to designate the place of compulsory administrative registration, it will no longer be possible for communes to refuse to register asylum seekers, or for the Public Social Welfare Centres to refuse to grant them the social aid to which they are entitled.

122. In a decision of 14 July 1994 the Court of Arbitration found that "such a limitation [of the liberty of movement of aliens declaring themselves refugees, as a result of compulsory administrative registration] is not contrary to the provisions of international law referred to; as, on the one hand, article 31, paragraph 2 of the Geneva Convention of 28 July 1951 relating to the Status of Refugees allows application of restrictions, provided they are necessary, to the liberty of movement of foreigners declaring themselves refugees; and as, on the other hand, both article 12 of the Covenant and article 2 of the Fourth Protocol to the European Convention on Human Rights allow the legislature to restrict the exercise of freedom to choose one's residence, if such restriction is necessary in a democratic society, particularly in the interests of national security or for the maintenance of public order." The Court found that "the administrative registration of aliens who may reside in Belgium only by reason of their request for recognition of the status of refugee meets the requirement of necessity formulated by the above-mentioned provisions" (C.A., decision No. 61/94, 14 July 1994, B.4.6; M.B., 9 August 1994).

Criteria for choice of the place of compulsory registration

123. In application of article 54 of the Act of 15 December 1980, article 1 of the Royal Decree of 23 December 1994 provides that the Minister of the Interior or his representative may "choose a commune as the place of compulsory registration only if the number of asylum seekers resident within the commune is lower than the result of the formula: [total number of refugee applicants on the waiting list who have not yet received an enforceable decision concerning their request for asylum] multiplied by [population of the commune divided by the population of Belgium]."

124. The purpose of this distribution formula is to determine the capacity of each commune to host asylum seekers, on the basis of its population as a proportion of the population of the Kingdom as a whole. However, that proportion will be scaled down to take account of the number of persons dependent on the commune's Public Social Welfare Centre, and scaled up to take account of the average per capita taxable income of the commune's natural persons.

125. It should be noted that this formula is applicable "except to the communes that the minister designates as communes in which, relatively speaking, a large number of asylum seekers reside" (art. 1, para. 2 of the Royal Decree of 6 April 1995). Pursuant to the latter provision, a ministerial order was issued on 4 May 1995 (M.B., 4 July 1995, p. 18,763), designating 34 communes that cannot be chosen as a place of compulsory registration in implementation of the Royal Decree of 6 April 1995.

126. It should also be pointed out that the determination of a place of compulsory registration for the refugee seeking asylum is intended to meet the concern to ensure a balanced distribution of asylum seekers (and therefore of the costs entailed) among all the communes and Public Social Welfare Centres, in view of the imbalances that have been identified. The principal residence of the person concerned may differ from his administrative residence as determined by the compulsory registration. However, the legislature's concern to promote a harmonious distribution of asylum seekers across the territory has led to the adoption of incentives to encourage communes and refugees seeking asylum to take steps to ensure that the latter's actual place of residence coincides with the administrative residence assigned to them by the Minister of the Interior or his representative.

127. First, registration in a specified place results in an obligation for the person concerned to present himself there regularly: a request for asylum may be declared inadmissible if submitted by an alien who, having been registered in accordance with article 54, paragraph 1, of the Act of 15 December 1980, "fails for at least one month to comply with the obligation to present himself" (art. 52, para. 2 (5) of the Act of 15 December 1980 on the entry, temporary and permanent residence and removal of aliens). According to the decision of the Court of Arbitration previously cited, imposition of this sanction in connection with failure to comply with the obligation to present oneself "cannot be regarded as manifestly disproportionate, as the legislature, in the person concerned's own interest, may require that he assist in the examination of his request" (C.A., decision No. 61/94, 14 July 1994, B.4.7).

128. Secondly, reimbursement by the State of the social aid granted to the asylum seeker is limited to 50 per cent of the aid granted when the Public Social Welfare Centre intervenes on behalf of an asylum seeker not resident within the commune specified pursuant to article 54 of the Act of 15 December 1980 or who is not entered in that commune's register of aliens, unless the commune or the Public Social Welfare Centre proves "that it has offered the refugee applicant decent and affordable public or private accommodation within its territory". This presupposes proof positive that available, "decent" (namely, conforming to the minimum safety, habitability and hygiene requirements) and affordable accommodation has been offered to the refugee seeking asylum, and that he has been afforded sufficient time to visit the premises and to accept or refuse the offer of accommodation: the Ministry of Public Health must be provided with proof that these steps have been taken.

129. Thirdly, when accommodation (public or private) is offered to the asylum seeker by the commune or Public Social Welfare Centre of his place of registration and that accommodation is decent and affordable, the amount of social aid granted may be reduced by an amount equal to the value of that benefit in kind, if the asylum seeker declines to reside in that accommodation.

130. Fourthly, the Public Social Welfare Centres are permitted to provide all or part of their social aid in kind rather than in cash, thereby greatly reducing the attractiveness to asylum seekers of residing outside - or at least any great distance from - the commune in which they are registered.

Waiting list for asylum seekers

131. The entry into force, on 1 February 1995, of the Act of 24 May 1994 (M.B., 21 July 1994) establishing a waiting list for aliens declaring themselves refugees or requesting recognition of the status of refugee (M.B., 21 July 1994, p. 19,104) must also be mentioned. The establishment of the waiting list and the principle of compulsory registration described above are indissociable in the mind of the legislature, for it is on this waiting list, kept in each commune of the Kingdom, that the compulsory registration is entered.

132. The creation of the waiting list is a result of the authorities' concern to exercise more effective control over asylum seekers staying in Belgium. The view was taken that the various authorities concerned should all have access to an information system enabling them, in each individual case, to take the necessary decisions. The authorities in question are those that participate in the procedure for granting the status of refugee, and also in the procedure for granting social aid.

133. This so-called "waiting list" register is distinct from the population register, which lists Belgians and aliens whose situation differs from that of asylum seekers. Once the status of refugee has been conferred on the asylum seeker registered on the waiting list, he is entered on the population register. Registration takes place on the initiative of the Minister of the Interior or his representative, as soon as the alien declaring himself a refugee or requesting recognition of the status of refugee arrives in Belgium, or as soon as his presence on the territory has been noted.

134. The Public Social Welfare Centre responsible for granting social aid to the asylum seeker is the one located in the commune on whose waiting list or population register he is registered, as provided for in article 12 of the Act of 24 May 1994 amending article 2, paragraph 5, of the Act of 2 April 1965 concerning responsibility for the cost of assistance granted by the public aid committees. This provision constitutes an exception to the principle that the Welfare Centre responsible is the one located in the actual residence of the beneficiary of the social aid.

135. The contents of the Act of 24 May 1994 were defined in greater detail in royal decrees. The Royal Decree of 1 February 1995 determines the information to be mentioned in the waiting list register and designates the authorities empowered to record that information (M.B., 16 February 1995, p. 3,456). The Royal Decree of 3 February 1995 provides that the members of the family of the alien declaring himself a refugee or requesting recognition of the status of refugee must be registered on the waiting list (M.B., 16 February 1995, p. 3,458).

Prohibition on the temporary or permanent residence of non-European Union aliens in certain communes

136. Article 6 of the Act of 28 June 1984 added an article 18 bis to the Act of 15 December 1980 on the entry, temporary and permanent residence and removal of aliens, authorizing the King, on a proposal by the Minister of Justice and subject to the favourable opinion of the commune Council concerned, to prohibit for a limited time the registration of aliens other than EEC nationals and persons considered as such in certain communes, if a growth in the foreign population of those communes is deemed to be detrimental to the public interest.

137. Six communes of Brussels and the city of Liège have obtained authorizations under article 18 bis. Mention has already been made, in the part of the previous report of Belgium concerning application of article 12 of the Covenant (CCPR/C/57/Add.3, paras. 144-146), of the existence of article 18 bis of the Act of 15 December 1980. In the course of the discussions reference was made to the applications made to the Council of State for annulment of the above-mentioned Royal Decrees. These applications were founded, inter alia, on article 12 of the Covenant.

138. Examining the compatibility of the contested Royal Decrees with article 12 of the Covenant and article 2 of the Fourth Protocol to the European Convention on Human Rights, on 9 November 1994 the Council of State handed down a decision rejecting those applications (C.S., decision No. 50,092, annexed).

139. The Royal Decrees in question ceased to have effect five years after the date of their adoption, that is, in May and June 1995 respectively. At the time of the drafting of this part of the present report they had not been renewed. However, article 18 bis remains unchanged in the Act of 15 December 1980.

Amendments to the Act of 15 December 1980 on the entry, temporary and permanent residence and removal of aliens

140. A bill amending the Act of 15 December 1980 on the entry, temporary and permanent residence and removal of aliens was adopted by the Senate on 27 June 1996.

141. This bill aims to bring Belgian legislation into line with the international instruments relevant in that connection: in particular, the Convention applying the Schengen Agreement on the gradual abolition of checks at the Contracting Parties' common borders, which was approved by the Act of 18 March 1993 (M.B., 15 October 1993) and entered into force in Belgium on 26 March 1995, and the provisions of the Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities (Dublin, 19 June 1990), once that Convention has entered into force.

142. The bill also aims at securing better control of immigration in Belgium. To that end, the Government intends to take the following measures:

> To guarantee as fully as possible the execution of measures for the removal of aliens, allowing, in certain circumstances, an extension of the detention of aliens subjected to the general régime and the holding of

asylum seekers whose applications have been rejected in centres located on the frontier or within the territory of Belgium;

To provide in principle for any alien from whom the Commissioner-General for Refugees and Stateless Persons has withdrawn the status of refugee to be issued with an order to leave the territory, when it has been established that that status was conferred on him as a result of misrepresentation or abuse of the asylum procedure;

To increase transport authorities' liability by extending the range of circumstances in which they must bear the costs arising in connection with the presence at the frontier of an alien who is to be returned and the circumstances in which they may have an administrative fine imposed on them;

To designate a compulsory place of residence in a reception centre for certain categories of asylum seeker;

To adapt the asylum procedure to specific situations, including that of aliens who, without authorization, leave the specified place on the frontier or in the Kingdom where they are being held;

To extend the offence of assisting illegal immigration so as to cover cases in which the rendering of such assistance in Belgium furthers illegal entry into or residence in a Member State of the Schengen area.

143. Lastly, it is intended that the act will update some provisions of the Act of 15 December 1980. The changes will be adaptations made in consequence of the Convention applying the Schengen Agreement and the Dublin Convention. The adaptations are provided for in articles 31, 33, 34, 35 and 37 of the act.

144. A more radical change concerns the specific regulations regarding the use of languages when examining the application for asylum. In order to introduce more transparency and put an end to the legal uncertainty that currently prevails, article 32 provides for simple, uniform regulation of this issue.

145. At the same time the act abolishes the possibility for aliens who have entered the country legally, or who are legal residents, to apply to the communal authorities for asylum (art. 29).

Article 13

146. Removal of aliens is regulated by the Act of 15 December 1980 on the entry, temporary and permanent residence and removal of aliens, amended by the Acts of 28 June 1984, 14 July 1987, 18 July 1991, 6 May 1993, 1 June 1993, 6 August 1993, 24 May 1994, 8 March 1995 and 13 April 1995, by the Royal Decrees of 13 July 1992, 31 December 1993 and 22 February 1995, and by its implementing Royal Decree of 8 October 1981, also amended a number of times.

147. Some of the provisions of the Convention applying the Schengen Agreement of 19 June 1990 are also applicable in this regard.

148. Removal measures may take four different forms:

refoulement;

an order to leave the country;

repatriation;

expulsion.

Refoulement

149. Refoulement (return) is the administrative decision on removal whereby the alien who has not yet crossed the Belgian frontier is forbidden to enter the territory of the Member States of the Schengen Area by the authorities responsible for frontier controls, acting on the authority of the Ministry of the Interior.

150. An alien may be turned back if he attempts to enter Belgium in one of the circumstances covered by article 3, paragraphs 1 (1), (3) and (4) of the above-mentioned Act of 15 December 1980 and by article 5, paragraphs 1 (c), (d) and (e) of the Convention applying the Schengen Agreement.

151. Article 6 of the bill cited in the commentary on article 12 of the Covenant incorporates into article 3 of the Act the provisions of article 5 of the Convention applying the Schengen Agreement.

152. When the new act enters into force, an alien attempting to enter Belgium will be turned back for the following reasons:

If he is apprehended in the airport transit area without the necessary documentation (art. 3, para. 1 (1) of the act);

If he attempts to enter the Kingdom without the necessary documentation (art. 3, para. 1 (2));

If he cannot present, when required to do so, documentation substantiating the purpose of the proposed stay and the conditions thereof (art. 3, para. 1 (3));

If he does not have sufficient means of subsistence both for the duration of the proposed stay and for his return to the country of provenance or his transit to a third State which he has been guaranteed permission to enter, and is not in a position to acquire those means lawfully (art. 3, para. 1 (4));

If he is named as a person to be refused entry to States parties to the Convention applying the Schengen Agreement, signed on 19 June 1990, either because his presence constitutes a threat to public order or national security, or because he has been the subject of a removal measure that has not been revoked or suspended, involving a prohibition on entry based on non-compliance with the national regulations concerning the entry or residence of aliens (art. 3, para. 1 (5));

If he is deemed by the Minister, following a favourable opinion of the Advisory Committee on Aliens, to be liable to compromise Belgium's international relations or those of a State party to an international convention by which Belgium is bound, relating to the crossing of external frontiers (art. 3, para. 1 (6));

If he is deemed by the Minister or his representative to be liable to compromise the public peace, public order or national security (art. 3, para. 1 (7));

If he has been repatriated or expelled from the Kingdom in the last 10 years, where the measure has not been suspended or revoked (art. 3, para. 1 (8)).

Order to leave the country

153. An order to leave the country is the administrative decision on removal whereby the Minister of the Interior or the delegated administrative authority (generally the Aliens Office) requires an alien not authorized or permitted to stay more than three months (long-term stay) or to reside permanently in Belgium to leave the country.

154. The reasons for which the alien may be issued with an order to leave the country before a specified date are set forth in article 7, paragraphs 1 (1) - (3) and (5) - (9) of the Act of 15 December 1980 and in articles 19 (1), 20 (1) and 21 (1) of the Convention applying the Schengen Agreement.

155. An order to leave the country may also be issued to an alien authorized to stay in Belgium for a limited period and the members of his family when they prolong their stay beyond the limited period for which they have been authorized to stay in Belgium and are no longer in possession of a valid temporary residence permit (art. 13 of the act), and to an alien who, after being authorized to reside temporarily in Belgium in order to pursue a course of studies, prolongs his stay after the completion of those studies and is no longer in possession of a valid temporary residence permit, or who prolongs those studies unduly, having regard to the results obtained (art. 61, para. 2).

156. Article 11 of the afore-mentioned bill incorporates into article 7 of the Act of 15 December 1980 the provisions of articles 19 to 21 of the Convention applying the Schengen Agreement.

157. When the new act enters into force, the reasons for which an alien not authorized or permitted to stay more than three months or to reside permanently in Belgium may be issued with an order to leave the country will be as follows:

If he stays in Belgium without being in possession of the documentation required for entry into the country (art. 7, para. 1 (1) of the act);

If he stays in Belgium beyond the period of validity of his visa or beyond a maximum period of three months, or cannot prove that that period has not been exceeded (art. 7, para. 1 (2));

If, by reason of his behaviour, he is deemed to be liable to compromise public order or national security (art. 7, para. 1 (3));

If he is deemed by the Minister, following a favourable opinion of the Advisory Committee on Aliens, to be liable to compromise Belgium's international relations or those of a State party to an international convention by which Belgium is bound, relating to the crossing of external frontiers (art. 7, para. 1 (4));

If he is named as a person to be refused entry (art. 7, para. 1 (5));

If he does not have sufficient means of subsistence both for the duration of the proposed stay and for his return to the country of provenance or his transit to a third State which he has been guaranteed permission to enter, and is not in a position to acquire those means lawfully (art. 7, para. 1 (6));

If he is suffering from one of the diseases or infirmities listed in the annex to the act (art. 7, para. 1 (7));

If he engages in self-employed or employed occupational activity without being in possession of the requisite authorization (art. 7, para. 1 (8));

If, in application of the international conventions or agreements binding on Belgium, he is handed over to the Belgian authorities on behalf of the authorities of the contracting States with a view to securing his removal from the territories of those States (art. 7, para. 1 (9));

If, in application of the international conventions or agreements binding on Belgium, he is required to be handed over by the Belgian authorities to the authorities of the contracting States (art. 7, para. 1 (10));

If he has been repatriated or expelled from the Kingdom in the last 10 years, where the measure has not been suspended or revoked (art. 7, para. 1 (11)).

158. Article 49 of the bill provides that a foreign student may be issued with an order to leave the country in the following circumstances:

If he prolongs his studies unduly, having regard to the results obtained;

If he engages in gainful activity manifestly incompatible with the normal pursuit of his studies;

If he fails to sit his examinations for no good reason;

If he prolongs his stay after the completion of his studies and is no longer in possession of a valid temporary residence permit;

If he fails to provide evidence that he possesses sufficient means of subsistence;

If he, or a member of his family referred to in article 10 bis, paragraph 1, who is living with him, has been in receipt of financial benefits granted by a Public Social Welfare Centre, the total amount of which, calculated over a period of 12 months preceding the month during which the order to leave the country is issued, exceeds three times the monthly amount of the minimum subsistence figure, fixed in accordance with article 2, paragraph 1, of the Act of 7 August 1974 introducing the right to minimum means of subsistence, and provided that benefit has not been repaid in the six months following the granting of the most recent monthly benefit.

Repatriation

159. Repatriation is the decision (ministerial order) whereby the Minister of the Interior, and he alone, may remove from the territory an alien who is not permanently resident in Belgium, after having obtained, where appropriate, the opinion of the Advisory Committee on Aliens.

160. An alien not permanently resident may be repatriated when he has violated public order or national security or has not complied with the conditions imposed on his stay, as provided for in law (article 20 of the Act of 15 December 1980).

161. Some aliens not permanently resident may be repatriated only in the event of a serious violation of public order or national security. These include aliens who have been officially and uninterruptedly resident in Belgium for at least 10 years (art. 21 of the same Act). A foreign student may be repatriated when he prolongs his stay after the completion of his studies or prolongs them unduly, having regard to the results obtained, or engages in gainful activity manifestly incompatible with the normal pursuit of his studies or fails to sit his examinations for no good reason (art. 61, para. 1, of the Act).

Expulsion

162. Expulsion is the decision (Royal Decree) whereby the King, and he alone, may remove from the territory an alien permanently resident in Belgium or a national of the European Union or of the European Economic Area to whom a residence permit has been granted, following the opinion of the Advisory Committee on Aliens. The Committee is called upon to advise on certain decisions relating to aliens. It is a consultative body made up of magistrates, lawyers and persons concerned with the defence of aliens' interests.

163. The above-mentioned aliens may be expelled only if they have committed serious violations of public order or national security.

Corrections and further details concerning the second periodic report (CCPR/C/57/Add.3)

164. In addition to the above, the following additions and/or corrections should be made to the previous report:

Paragraph 148: Following the entry into force of the Act of 6 May 1993 amending the Act of 15 December 1980 on the entry, temporary and permanent

residence and removal of aliens, the reference to article 53 should be deleted and replaced by references to article 13 (issuance of an order to leave the country to aliens authorized to stay more than three months in Belgium for a limited period, on the expiry of that authorization) and to article 52 bis (denial of temporary residence permits to persons claiming asylum-seeker status, for reasons of public order or national security).

Paragraph 149 (c): The Act of 6 May 1993 made major changes to procedures for appealing against decisions taken on the basis of article 52 of the Act of 15 December 1980. There is now an "urgent appeal procedure" to the Commissioner-General for Refugees and Stateless Persons, who confirms the contested decision or decides directly that a further examination is necessary and that the interested party is temporarily authorized to remain in the Kingdom as an applicant for refugee status (new articles 63 (2) to 63 (5)).

Paragraph 152: Further to the comments concerning paragraph 149 (c) above, it should be noted that the urgent appeal is lodged directly with the Commissioner-General for Refugees and Stateless Persons, who hears it and gives a ruling, deciding either to confirm the contested decision, or to examine the request at a later date and to authorize the applicant for refugee status to reside temporarily in the Kingdom.

Paragraph 153: For information, the Act of 18 July 1991 introduced an article 74 (5) which authorizes the holding of certain categories of asylum seeker in premises located on the frontiers or in equivalent premises located within the Kingdom. This provision currently applies to two buildings located in the airport zone, with a total maximum capacity of 80 places, and also, since 1 March 1994, to part of the Steenokkerzeel closed centre. By a Royal Decree of 9 March 1994 the latter premises have been treated as premises located on the frontiers. The Act of 6 May 1993 also introduced an article 74 (6) which provides for the possibility, in certain circumstances, of "holding" asylum seekers in a "specified place" situated in the Kingdom (in this specific case, the Steenokkerzeel closed centre), with a view to securing their effective removal from the territory if their application is finally rejected. They may be held in this way for a maximum period of two months.

Paragraph 154: For information, under the Act of 18 July 1991 that decision may now be taken by the Minister's representative (in this specific case, officials of the Office of Aliens). As part of a reorganization of the system for appeals against decisions on matters concerning asylum, the Act of 6 May 1993 also abolished the possibility of lodging such appeals with the President of the court of first instance.

Article 14

165. A number of acts have been adopted with a view to improving the administration of justice in the broad sense.

166. The purpose of the Training and Recruitment of Magistrates Act of 18 July 1991 (M.B., 21 July 1991) is to regulate appointments of magistrates and

ensure greater independence for judges. Before the entry into force of this Act, judges were appointed on the basis of essentially political criteria. There are now two methods of becoming a magistrate. The first applies to candidates without professional experience; the second, to those with such experience. Candidates without experience who have won prizes in the competition for admission to the judicial training course are appointed judicial trainees; they may be appointed magistrates in the Public Prosecutor's Office after 18 months' training, or appointed judges after three years' training.

167. Candidates poss sing professional experience must pass a professional aptitude examination designed to assess their maturity and intellectual capacity. Those who gain prizes in the examination may be appointed magistrates without having to undergo additional training.

168. The Minister of Justice, who proposes the appointment of a candidate to the King, may of course still make a political choice, but he is restricted in that choice and can choose only a candidate who has shown proof of the necessary skills.

169. The Act of 3 August 1992 (M.B., 31 August 1992) addresses another matter of concern, namely, delays in the judicial process. A number of measures concerning matters of judicial organization, jurisdiction, annulments, introduction of proceedings and especially examination and trial of cases, are intended to speed up proceedings. One of the most important measures taken in this context has been to offer the parties the possibility of requesting the judge, at the start of the proceedings, to rule on the subsequent progress of the proceedings. In a binding ruling, the judge sets the dates on which the parties must submit their conclusions and the date on which the case will be heard. In this way the legislature has tried to ensure that all proceedings take place within a reasonable period of time.

170. It was the same concern to guarantee every individual the right to sound administration of justice that prompted the adoption of the Act of 11 July 1994 on police courts and the acceleration and modernization of criminal justice (M.B., 21 July 1994). The principal aim of the part of the Act dealing with police courts is to deal with the judicial backlog in the courts of appeal, which are overwhelmed with cases relating to traffic accidents. Henceforth, all road traffic offences will be tried by the police courts, as will all compensation proceedings in cases of harm resulting from a traffic accident.

171. Likewise, the same Act also includes a series of measures aimed at speeding up the procedure itself, such as a new procedure for issuing official notice to appear before the court. The crown procurator may give a person no fewer than 10 days' and no more than 2 months' notice to appear before the police court or the correctional court. In this way the procedure is expedited without any impairment of the right of the accused to a fair trial.

172. Article 14 of the Covenant and article 6 of the European Convention on Human Rights are increasingly invoked and applied by the Belgian courts. Consequently, it is impossible to offer an exhaustive review of the application of article 14. The court decisions show that there is no dispute as to the application of the principles of fair trial in the ordinary courts. Many court rulings relate to the scope of application of articles 14 of the Covenant

and 6 of the European Convention on Human Rights in proceedings before courts other than the ordinary courts. There follows an overview of the main court rulings relating to the scope of application of article 14 of the International Covenant on Civil and Political Rights and article 6 of the European Convention, and of the practice specific to article 14 of the Covenant. As regards the scope of article 14, the Court of Cassation decided that this provision is not applicable to the decisions of examining magistrates' courts ruling on pre-trial detention (Cass., 17 December 1991, Arr. Cass., 1991-92, 353; Pas., 1992, I, 307; Cass., 28 January 1992, Arr. Cass., 1991-92, 489; Pas. 1992, I, 467) or on the exequatur of arrest warrants issued by foreign authorities (Cass., 3 March 1992, Arr. Cass., 1991-92, 632, Pas., 1992, I, 598). The Court of Cassation also decided that article 14 is not applicable to disputes concerning rights and obligations in tax matters, except where proceedings in tax matters lead or may lead to a penalty resulting from a criminal charge within the meaning of those provisions (Cass., 23 January 1992, Arr. Cass., 1991-92, 471; Pas., 1992, I, 453).

173. The Council of State ruled that the conditions referred to in article 14 apply only to the judicial bodies. Consequently, they cannot be invoked against the decision of the Appeal Commission of the Institute of Business Auditors acting in its capacity as an administrative authority (C.S., No. 39,134, 31 March 1992, Recueil des arrêts du Conseil d'Etat 1992).

174. The Council of State also ruled, as had the Court of Cassation previously, that certain principles of articles 14 of the Covenant and 6 of the European Convention must be applied, even when those articles are not applicable to the proceedings concerned. Some of these principles, for example the obligation to hear the case within a reasonable period of time, are in fact general principles of law which must be applied to all proceedings (C.S., No. 40,749, 16 October 1992, Recueil des arrêts du Conseil d'Etat 1992).

175. In a decision of 2 March 1995 (C.A., No. 19/95, 2 March 1995, M.B., 11 May 1995), the Court of Arbitration decided that, in accordance with the first sentence of article 14, all persons subject to the jurisdiction of the courts must be treated in the same manner. Consequently, it decided that the rule set forth in article 671 of the Judicial Code, whereby a person on trial who is in receipt of legal aid may not obtain copies of the most important documents in the criminal file free of charge and therefore does not have access to the facilities necessary for the preparation of his defence, whereas a solvent person on trial is able to obtain copies of those documents, violates the principle of equality.

176. With regard to the principles of a fair and public hearing by a competent, independent and impartial tribunal, an extensive and well established body of practice has developed, particularly following the implementation of a number of judgments of the European Court of Human Rights. Application of the principle of presumption of innocence also gave rise to many cases. The right to the assistance of a lawyer was the subject of debate following the judgments of the European Court of Human Rights in the Poitrimol and Lala & Pelladoah cases (European Court of Human Rights (CEDH), 23 November 1993, Poitrimol v. France, Publ. Cour, Series A, vol. 277-A; CEDH, 22 September 1994, Lala & Pelladoah v. Netherlands, Publ. Cour, Series A, vol. 298 A & B). In matters of ordinary offences, the defendant must in principle appear in person. If he does not

appear in person, he does not have the right to be represented by counsel. The European Court of Human Rights decided that that rule constitutes unwarrantable interference in the right to the assistance of a lawyer and that, consequently, it violated article 6, paragraph 3 (c) of the Convention.

177. There is also a rule in Belgian law whereby an application by an accused person to set aside the judgement sentencing him to a custodial penalty and ordering his immediate arrest is admissible only if he is actually in custody. In a decision of 8 December 1992 (Arr. Cass., 1991-92, 1400; Pas., 1992, I, 1350), the Court of Cassation decided that that rule does not violate articles 6 of the Convention and 14 of the Covenant, as it does not deny the right of access to a court but is only a reasonable additional precondition for an appeal. Following the Poitrimol judgment in the European Court of Human Rights, the question once again arises whether this rule is compatible with articles 14 of the Covenant and 6 of the European Convention.

178. The question whether the two rules should not be modified in the light of the judgments of the European Court of Human Rights has also been debated in parliament.

179. The Court of Cassation also decided that article 14, paragraph 3 (g) of the Covenant - pursuant to which, in the determination of the merits of any public right of action directed against him, everyone shall be entitled not to be compelled to testify against himself or to confess guilt - does not prevent a witness from being heard under oath by a parliamentary committee of enquiry (Cass., 6 May 1993, Arr. Cass., 1993, 455; Pas. 1993, I, 452).

180. As regards application of article 14, paragraph 5, of the Covenant, the Court of Cassation ruled that that provision is not violated by the circumstance that notice of appeal by an accused person on whom a default judgement has been pronounced must be given no more than 15 days after notice of the judicial decision has been served to the convicted party or to his domicile (Cass., 1 February 1994, Arr. Cass., 1994, 133; Bull., 1994, 137).

181. Lastly, the Court of Cassation decided that the sole purpose of article 14, paragraph 7, of the Covenant is to prohibit, after a final acquittal or conviction, new proceedings from being instituted with respect to the same offence in the same country; it is not applicable in Belgium in the case of a conviction handed down by a foreign court (Cass., 20 February 1991, Arr. Cass., 1990-91, 671; Pas., 1991, I, 597).

Article 15

182. In addition to the commentary to be found in paragraph 238 of the initial report (CCPR/C/31/Add.3), it should also be pointed out that the Special Act of 16 July 1993 (M.B., 20 July 1993) authorizes the decree-enacting legislature not to apply Book I of the Penal Code to the decrees and ordinances it enacts, as it is empowered to pass decrees providing for more severe criminal penalties with retroactive effect, or deny them retroactive effect when their effect is to mitigate: procedures which are prohibited under article 2, paragraphs 1 and 2 of the Penal Code. The facts of the matter are quite different, for the decree-enacting legislature is obliged, like the federal legislature, to comply with

article 15 of the Covenant, which prohibits the retroactive criminalization of an act, and provides for the imposition of the lighter penalty. Article 15 has supranational force and is binding on all those empowered to enact legislation in Belgium.

Article 16

183. Article 18 of the Constitution stipulates that "Civil death [forfeiture of all civil rights] is abolished and shall not be reinstated."

184. In principle, individuals' legal personality begins at birth. For that to be the case, the child has, however, to have been born alive and viable. On the other hand, if these conditions are fulfilled, the law in principle allows personality to be extended retroactively to the moment of conception, if to do so is in the child's interest. This rule has concrete applications in areas such as succession, affiliation and civil liability.

Article 17

185. The rights protected by this provision are reproduced in various articles of the coordinated Constitution of 17 February 1994 (M.B., 17 February): articles 15 (inviolability of the home), 22 (private and family life) and 29 (freedom from interference with correspondence). Previously, privacy as such was not one of the rights and freedoms protected by the Constitution.

Privacy

(a) Personal data

186. According to paragraph 10 of General Comment 16 (thirty-second session) concerning article 17, the gathering and holding of personal information on computers, data banks and other devices, whether by public authorities or private individuals or bodies, must be regulated by law.

187. In accordance with that principle, Belgium adopted an Act of 8 December 1992 on the protection of privacy and the processing of personal data (M.B., 18 March 1993) together with several implementing orders (M.B., 28 February 1995). The adoption of this Act has enabled Belgium to ratify the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data (Approving Act of 17 June 1991, M.B., 30 December 1993). The Act of 1992 includes provisions on data quality, concerning the lawfulness of the computerized or manual processing, and the relevance of the data gathered and processed to specified and legitimate purposes (arts. 5 and 8).

188. Some provisions concern "sensitive" data:

> Without the special consent of the person concerned, medical data may neither be processed, except under the supervision and responsibility of a practitioner of the art of healing, nor, except as provided by law or in emergency, be communicated to third parties (art. 7);

So-called "highly sensitive" data, concerning racial or ethnic origin, political, philosophical or religious opinions or activities, and trade union or mutual benefit society membership, may be processed only for the purposes determined by or pursuant to the Act (art. 6; see also implementing order No. 7, M.B., 28 February 1995 and Royal Decree No. 14, M.B., 30 May 1996);

Article 8 lists 16 categories of data described as "judicial" because they reveal the existence of a dispute before the courts, tribunals or administrative bodies, involving the person concerned; their processing is authorized only for the purposes determined by or pursuant to the Act (see implementing order No. 8, M.B., 28 February 1995).

189. Implementing orders Nos. 7, 8 and 14 referred to above specify the régimes derogating from the principles prohibiting the use of "highly sensitive" and "judicial" data, one of which is the special consent of the person concerned. These exceptions are very often motivated by the exigencies of the current systems for personnel and social insurance file management.

190. The Act establishes the principle of transparency, by conferring on all individuals the right to be informed when their names are entered in a database for the first time (art. 9), the right of access to the files relating to them (art. 10), and also the right to correct inaccurate, incomplete or irrelevant data (art. 12). In certain cases a right of monitoring is conferred on the Commission for the Protection of Privacy (art. 13), which also has advisory and recommendatory powers on any matter concerning application of the fundamental principles of protection of privacy in connection with personal data processing systems (arts. 29 and 30). The individual is also granted a right to bring proceedings for interim relief before the President of the court of first instance (art. 14), and specific criminal sanctions - such as the publication of judgements in the press and prohibition of the processing of personal data, the deletion of data and confiscation of computer hardware - are intended to ensure better implementation of the Act and the obligations of confidentiality for which it provides (arts. 37, 40 and 41).

191. Royal Decree No. 15 (M.B., 15 March 1996) regulates dispensations from the obligation to inform the person concerned (art. 9 of the Act).

192. The main shortcomings identified in the Act to date are as follows:

The absence of any obligation to provide notification of the first entering of personal data relating to the "co-contractor", in the broad sense, particularly in the context of social or professional relations;

The absence of any reference to a principle of honesty, in application of which persons concerning whom information is gathered would be informed whether replies to questions put to them are compulsory or optional;

The lack of any recognition of the right of any person not to be subjected to an administrative or private decision reflecting adversely on him and taken solely on the basis of a database providing a personality profile;

The absence of the right of any person to refuse to allow personal data concerning him to be processed;

The frequency with which the exception based on the consent of the person concerned is invoked, albeit given in a specific instance; such persons may find themselves in a situation of socio-economic or other dependence that prevents them from giving their free and informed consent in all circumstances.

(b) Social and health data

193. In the social security sphere, by an Act of 15 January 1990 (M.B., 22 February) Belgium established a Central Social Security Data Bank. It is responsible, inter alia, for conducting, organizing and authorizing exchanges of data between social security institutions; for coordinating relations between the social security institutions and the national register of natural persons; and for gathering, recording and processing the general identification data that do not appear in the register of natural persons. Various provisions of the Act are designed to ensure the protection of privacy. For example:

Communication of data between institutions or to third parties requires the authorization of a supervisory committee (art. 15). The Data Bank also verifies the lawfulness of data transmissions;

Under article 19, every person has a right to see personal data concerning him, a right to correct inaccurate or incomplete data and a right to delete superfluous or inappropriate data;

Article 26 lays down rules for the protection of personal medical data, which the legislature regards as highly sensitive. Exchange of these data within each institution and within the Data Bank takes place under the supervision and responsibility of a doctor;

Article 28 places an obligation of confidentiality on any person involved in gathering social data.

194. On 18 April 1996 a Royal Decree was adopted making the record of personal data communicated by social security institutions available to the Commission for the Protection of Privacy.

195. In one specific sector of social security, namely, compulsory health care and benefits insurance, the Coordinated Act of 14 July 1994 (M.B., 27 August 1994; Err. M.B., 13 December 1994) specified the scope of respect for privacy in several health contexts: free choice of the insuring body (art. 118), of the care provider, hospitals and health care establishments (art. 127), and respect for medical confidentiality (arts. 147, 150 and 153) are guaranteed in principle. On the other hand, in order to combat medical over-consumption, certain rights have been presented in prescriptive form: thus, therapeutic freedom is limited with a view to avoiding the prescription of needlessly costly treatments or unnecessary services (art. 73); profile committees (arts. 30 and 206) and monitoring committees (art. 142) are established to evaluate and verify health care dispensers' levels of consumption; sanctions, such as suspension of application of the system whereby the fund pays the bulk of the

medical bill directly on the user's behalf, penalize conduct departing from the established norms (arts. 77, 157); computerized systems, such as electronic processing of benefits data (art. 138) and the bar-coding of prescriptions (art. 73) are introduced in order to monitor "over-prescribers"; régimes of medical liability (art. 73) and financial liability (art. 77) are introduced to discourage excessive medical consumption. It is also to be noted that reimbursement of exceptional health benefits requires investigations into insured persons' private circumstances (art. 25).

196. Some provisions of the Land Insurance Contracts Act of 25 June 1992 (M.B., 20 August 1992) concern the right to respect for privacy in so far as they relate to the policyholder's state of health. For example, article 95 of the Act, concerning medical information, provides inter alia that the medical examinations necessary for the conclusion and execution of the contract must be based only on information determining the applicant's present state of health, and may not include genetic techniques intended to determine his future state of health.

197. The Royal Decree of 6 December 1994 (M.B., 30 December 1994), pursuant to the decision of the Council of State of 10 December 1993 (ch. III, No. 45,218, Recueil des arrêts du Conseil d'Etat) repealing the Royal Decree of 21 June 1990 (M.B., 10 July), specified the conditions whereby hospitals are obliged to communicate patients' clinical records to the Minister responsible for health matters, keeping in mind the requirement for absolute respect for the anonymity of the data transmitted, and averting any theoretical possibility of identifying the persons concerned. This Decree also establishes a committee for the supervision and evaluation of statistical data concerning medical activities in hospitals. Mention should also be made of the Royal Decree of 16 December 1994 (M.B., 31 January 1995) amending the standards with which hospitals and their services must comply, article 1 of which adds an article 9 quater to the Royal Decree of 23 October 1994, referring to the obligations imposed by the above-mentioned Act of 8 December 1992.

198. The Court of Arbitration ruled that the right to respect for one's privacy is not violated by the obligation for persons performing clinical biological services to declare their participation in other legal entities or companies, when such a measure relates to the objective of transparency sought by the legislature in this sector, with a view to securing the country's economic well-being and the protection of health (C.A., 8 March 1994, No. 22/94, M.B., 25 March; see also C.A., 10 May 1994, No. 37/94, M.B., 27 May 1994).

(c) Economic data

199. The Consumer Credit Act of 12 June 1991 (M.B., 9 July 1991) includes in its chapter VI requirements concerning the processing of personal data (arts. 68 to 71; see also the Royal Decree of 20 November 1992, M.B., 11 December 1992). After establishing the principles of lawfulness and proportionality in connection with the processing of consumer data, these provisions set out an exhaustive list of the data that may be processed and of the persons to whom they may be communicated in accordance with a specified procedure (art. 69); recognize consumers' right to receive information on and have access to data concerning them and to correct and delete data (art. 70); and specify the functions of the Central Data Bank (art. 71).

200. The Court of Arbitration decided that an electricity company's disclosure to the commune authorities of the identity of a person who had had a limiting device installed in his home might constitute an attack on his honour and reputation, as protected by article 17 of the Covenant; for, in so doing, the company revealed that the person had failed to pay his electricity bills in a timely manner. However, such interference is provided for in law (in this specific case, by an ordinance of the Brussels-Capital Region), and is justified, as it is included among other measures to prohibit power cuts with a view to protecting the health of a category of persons, and is not disproportionate to the objective sought, particularly as the persons receiving the information are bound by professional secrecy (C.A., 18 February 1993, No. 14/93, M.B., 3 March 1993).

(d) Criminal law

201. Article 25 of the Road Traffic Police Act (inserting article 50 (1) of the Act of 8 December 1992) specifies the extent of the obligation to notify the driver who has been booked, once the points system for driving licences introduced by the Act of 18 July 1990 (M.B., 1 July 1993) comes into effect.

202. The Police Functions Act of 5 August 1992 (M.B., 22 December 1992) lays down strict conditions with which police must comply when carrying out searches of persons, vehicles or buildings (Arts. 27 to 29) or identity checks (art. 34). The same Act also regulates the use by police services of personal data of value to them in the performance of their duties (art. 39) and respect for the privacy of persons arrested, detained or held (art. 35).

203. The Act of 19 July 1992 regulating the occupation of private detective (M.B., 2 October 1992; Err. 11 February 1993) attaches criminal sanctions to various prohibitions on information gathered, relating, inter alia, to the political and religious beliefs and trade union affiliation, sexual tendencies or health of the individuals who are the subject of the detective's professional activity (art. 7).

Family life

204. According to the settled judicial practice of the Council of State, any decision to repatriate or expel an alien residing in Belgium with his family must cite the reasons for that decision, so as clearly to demonstrate the need for the interference in the alien's private and family life, and the reasons why considerations of public order, inter alia, should prevail over the family and personal interests of the person concerned (see, for example, C.S., 27 March 1991, No. 36,752; C.S., 3 May 1991, No. 36,958; C.S., 19 February 1992, No. 38,790; C.S., 4 November 1992, No. 40,936). The Council of State decided that if that condition is not met, and provided it is established that there is a risk of serious harm that will be difficult to remedy, the removal measure must be suspended (see, for example, C.S., 19 August 1991, No. 37,531, Recueil des arrêts du Conseil d'Etat 1991; C.S., 25 June 1992, No. 39,848, Recueil des arrêts du Conseil d'Etat 1992; C.S., 29 October 1992, No. 40,929, Ibid.).

205. In 1991 the European Court of Human Rights found that Belgium had violated the right to respect for family life (article 8 of the European Convention on Human Rights), following the expulsion of a Moroccan national who had lived in

Belgium with his family since infancy (CEDH, Moustaquim judgment of 18 February 1991, Series A, No. 193). Following that finding against it, Belgium informed the Council of Europe Committee of Ministers that the judgment had been widely circulated to the competent Belgian administrative and judicial authorities so as to enable them to take account of the case law of the Court in any similar cases that might arise (annex to Resolution DH (92) 14 of the Committee of Ministers).

206. The Court of Arbitration ruled that, by requiring that alien couples not nationals of a European Union Member State and benefiting from family reunification must not only have the legal status of husband and wife but must also be de facto cohabiting spouses, the legislature is not interfering disproportionately in the private lives of the persons concerned, provided the requirement is intended only to enable the administrative authorities to verify, within a reasonable period of time, whether the cohabitation is real and lasting. Such has indeed been the case since the entry into force of the Family Reunification Act of 6 August 1993 (M.B., 20 October 1993), which fixes that period of time at one year, which may be exceptionally extended for three months if the reasons are cited (C.A., 9 January 1996, No. 4/96, Journal des tribunaux 1996, p. 188). The above-mentioned Act of 6 August 1993 also established an age qualification for family reunification: the spouses must be at least 18 years old, the purpose being to combat forced or arranged marriages between children.

207. A man wishing to recognize his child has the right to respect for family life; he cannot be regarded as less capable of assessing the child's best interests than the child's mother or legal representative (C.A., 14 July 1994, No. 62/94, M.B., 3 September 1994).

208. According to the Court of Cassation, the annulment of fake marriages does not constitute interference in the exercise of the right to respect for private and family life (Cass., 19 March 1992, Pas., 1992, I, 659).

The home

209. The Court of Cassation accepted that protection of the home also covered work premises (Cass., 21 October 1992, Journal des tribunaux 1993, p. 161).

210. The right to respect for privacy and inviolability of the home, as established, inter alia, in article 17, paragraph 1, of the Covenant, are not to be ignored merely because, in the absence of the occupant, the ordinance of the President of the court concerning the report establishing adultery is not served on the occupant (Cass., 18 December 1992, Rechtskundig Weekblad 1992, p. 1,061).

Correspondence

211. The interception of telephone communications using Zoller equipment without the subscribers' knowledge constitutes a violation of the right to respect for privacy, since no law existed authorizing such interference (Cass., 2 May 1990, Revue de droit pénal 1990, 974; Cass., 23 January 1991, Pas., 1991, I, 491). Shortly after this judgement an Act of 11 February 1991 (M.B., 16 March 1991) inserted an article 88 bis in the Code of Criminal Investigation, allowing the examining magistrate to intercept telephone communications when he considers that the circumstances render it necessary in order to ascertain the truth.

212. As for the actual tapping of telephone conversations, the Act of 30 June 1994 on the protection of private life against the tapping, logging and recording of private communications and telecommunications (M.B., 24 January 1995) is intended to strike a balance between considerations of respect for privacy and the fight against terrorism and large-scale crime. Henceforth prohibition is the rule, on pain of criminal sanctions, tapping being permitted only in a comprehensively listed series of exceptional cases, and in compliance with a procedure laid down in the Act.

213. The Court ruled that the use by a Belgian judge of evidence obtained by tapping telephone conversations in the Netherlands, in accordance with Netherlands law, is not incompatible with articles 8, paragraph 2, and 17 of the Covenant, nor with article 29 of the coordinated Constitution, since the tapping was carried out on the basis of legislation that adequately specified the procedures for so doing (Cass., 30 May 1995, IDJ 1995, p. 850; see also Cass., 26 January 1993, Pas., 1993, I, 101).

214. The Act of 21 March 1991 reforming certain public economic enterprises (M.B., 27 March), Title II of which is devoted to telecommunications, establishes criminal sanctions for various violations of the confidentiality of data or information transmitted by means of telecommunications (arts. 111 and 114, para. 7).

Honour and reputation

215. In the field of copyright, the Act of 30 June 1994 on copyright and related rights (M.B., 27 July 1994) establishes one of the aspects of the right to respect for privacy, namely, the right to an image. Article 10 provides that "Neither the author, nor the proprietor of a portrait, nor any other possessor or holder of a portrait has the right to reproduce it or communicate it to the public without the consent of the person represented or that of his successors for the twenty years following his death."

216. The Court found that the recording of hospitalized patients without their knowledge constitutes a violation of the right to an image and, by the same token, of the right to respect for privacy (Brussels Labour Court, 23 March 1993, Revue de droit social, 1993, p. 123).

Article 18

217. Freedom of conscience and freedom of worship are established in articles 19 to 21 of the coordinated Constitution of 17 February 1994.

> "19. Religious freedom and freedom of public worship, together with freedom to express an opinion on any subject, are guaranteed, save for the punishment of offences committed in the exercise of those freedoms.
>
> 20. No one may be compelled to participate in any manner whatsoever in the acts and ceremonies of any religious denomination, or to observe its days of rest.

21. The State does not have the right to intervene either in the appointment or in the induction of ministers of any denomination, or to forbid them to correspond with their superiors and to publish their acts, save, in the latter case, for ordinary liability in matters of the press and publication.

A civil marriage ceremony shall always precede the religious ceremony, save in exceptional cases to be established, where necessary, by law."

Separation of Church and State

218. Belgium does not have a system of rigid separation of Church and State, and the State pays the salaries and pensions of ministers of the recognized denominations. Since 5 May 1993 this system has been reinforced by the insertion of a second paragraph in the constitutional provision in which it was established, which became article 181 of the text of the coordinated Constitution on 17 February 1994:

"181 (1). The salaries and pensions of ministers of religion are paid by the State; the sums necessary for this purpose are included in the annual budget.

(2). The salaries and pensions of the representatives of organizations recognized by law that offer moral assistance according to a non-denominational philosophical conception are paid by the State; the sums necessary for this purpose are included in the annual budget."

Freedom of conscience and worship

219. A subtle distinction was drawn between the absolute character of freedom of conscience and the relative character of religious practices by the civil court of Liège, juvenile division, in a case relating to the custody of children (Civ., Liège, 13 June 1991, Revue de jurisprudence de Liège, Mons et Bruxelles, pp. 1,287-1,289). A 16-year-old girl, of whom her mother had custody, was a Jehovah's Witness. Following an action by her father to obtain a change of custody in his favour, the court pointed out that it was futile "to wish totally to change the beliefs" of the child or to prevent her from meeting other adherents of that religion. However, it prohibited the mother from allowing her daughter to be baptized before the age of majority, and stipulated that the father must be notified immediately if a health problem arose requiring the daughter to have a blood transfusion or an organ transplant; the father was also accorded the right to have his daughter examined by a doctor of his choice.

220. With regard to the protection of new or minority religious tendencies and the relative character of religious practices, the Council of State (C.S., 19 January 1994, No. 45,699) pronounced concerning restrictions on the external manifestations of a religion that requires its adherents to make no distinction between their love of humans and of animals. The Council of State accorded that religion the constitutional and international protection established over freedom of conscience and worship. However, it emphasized that the public authorities may impose restrictions on the external manifestation of worship

provided they constitute measures necessary, in a democratic society, for public security or the protection, inter alia, of public order and public health.

Freedom of conscience and employment

221. As regards the rule that no one may be compelled to reveal his beliefs, the Court of Arbitration (C.A., 15 July 1993, No. 65/93, M.B., 18 September 1993 and C.A., 20 January 1994, No. 7/94, M.B., 23 March 1994), ruling on a preliminary issue, twice noted that a provision of the Act of 16 July 1973 guaranteeing the protection of ideological and philosophical tendencies was unconstitutional. The article in question provides:

> "As regards members of staff exercising cultural functions in cultural establishments and bodies, the recruitment, nomination, appointment and promotion of both established staff, temporary staff and contractual staff must take place in accordance with the principle of equality of rights without ideological or philosophical discrimination and in accordance with the rules governing their respective status, taking account of the need for a balanced distribution of functions, powers and attributions among the various representative tendencies, for a minimum presence of each of those tendencies, and avoiding any monopoly or predominance of any one of those tendencies."

222. According to the Court, the intended purpose of that provision is to ensure a minimum presence of the representative tendencies in the functions referred to while avoiding an over-representation of any one tendency, except where it is a question of ensuring a minimum presence of the numerically smallest tendencies. However, that system implies that applicants for those functions might be placed at a disadvantage, despite their merit, because of their ideological or philosophical beliefs. It risks placing at a disadvantage those who might wish to avail themselves of the right not to state their views publicly, and places at a disadvantage those who adhere to one tendency on some issues and to another on other issues. The Court of Arbitration found that the resulting inequality of treatment was, inter alia, a violation of the freedom to express or not to express one's personal opinions.

Wearing of garments with religious significance

223. As regards the right to wear a garment with religious significance, courts hearing relief proceedings (giving interim rulings) had occasion to stress that the prohibition on the wearing of a hat (Civ. Ghent (réf.), 25 March 1994, Journal du droit des jeunes, 1994, vol. 139, 31) or the prohibition on the wearing of an external political or religious emblem or garment in a State or private school (Civ. Liège (réf.), 26 September 1994, Journal des tribunaux, pp. 832-833) does not violate article 18 of the Covenant, specifying in the second case that there is no impairment of the right to education, as all that is necessary is to choose an establishment that has not adopted such a rule. On the other hand, other courts, also delivering interim rulings, have found in favour of the right to wear a headscarf in school.

Freedom of conscience and education

224. As regards education, article 18 protects the liberty of parents and, where applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions. Following the latest institutional reforms and since the entry into force of the Act of 17 February 1994 coordinating the Constitution, the constitutional basis for this matter is to be found essentially in articles 24 and 127, which read:

"24 (1). Education is free from restriction; any preventive measure is forbidden; punishment of misdemeanours is regulated only by law or by decree.

The Community ensures the parents' freedom of choice.

The Community organizes an education that is neutral. Neutrality implies, inter alia, respect for the philosophical, ideological or religious beliefs of the parents and pupils.

The schools organized by the public authorities offer, until the end of compulsory schooling, a choice between the teaching of one of the recognized religions and that of non-denominational morals.

(2). If a Community, as the organizing authority, wishes to delegate powers to one or several autonomous organs, it may do so only by decree adopted by a two-thirds majority of the votes cast.

(3). Everyone has the right to an education that respects fundamental freedoms and rights.

Access to education is free of charge until the end of compulsory schooling. All pupils subject to compulsory schooling have the right to moral or religious instruction, the cost of which is borne by the Community.

(4). All pupils or students, parents, members of staff and educational establishments are equal before the law or decree. Laws and decrees take account of objective differences, including the characteristics specific to each organizing authority which justify an appropriate treatment.

(5). The organization, recognition and subsidizing of education by the Community are regulated by law or decree."

"127 (1). The Councils of the French Community and of the Flemish Community, each in its own sphere, regulate by decree:

1. Cultural matters;

2. Education, except:

(a) the establishment of the start and termination of compulsory schooling;

(b) the minimum conditions for the issuance of diplomas;

(c) the pensions régime."

225. A decision of the civil court of Brussels (Civ. Bruxelles (ch. 4), 23 March 1990, Journal des tribunaux 1991, p. 114) specified the limits of freedom of education when taken in conjunction with respect for the philosophical, ideological or religious beliefs of the parents and pupils, provided for under article 24 of the Constitution. The Court considered, firstly, that those freedoms do not imply the possibility for the parents to be able to choose in all circumstances a denominational education for their child corresponding to their own beliefs. Secondly, common sense rules out the obligation imposed on the Communities to set up or subsidize a denominational school whenever and wherever a child's parents claim to be adherents of a particular religion or philosophical belief. Thus, the freedom to manifest one's religion or belief does not imply a right to a system of schooling organized by the adherents of that religion or belief, but only respect for the philosophical, ideological or religious beliefs of all individuals, in a spirit of neutrality.

226. The Court of Arbitration (C.A., 4 March 1993, No. 18/93, M.B., 29 May 1993) interpreted the concept of freedom of education fairly broadly. According to the Court, it implies the right of any private individual - without prior authorization and without prejudice to respect for fundamental freedoms and rights - to be able to organize and arrange for the provision of an education in accordance with his own conception, regarding both the form and the content of that education. Moreover, freedom of education includes the freedom of the organizing authority to choose its teaching staff.

227. That freedom would be purely theoretical if the organizing authorities were unable to benefit from subsidies from the public authorities. However, the right to subsidization is limited. The Court recognized the validity of three types of limitation on subsidization:

A link between subsidies and requirements of the general interest, including those relating to an education of high quality;

A link between subsidies and the need to distribute available financial resources among the various tasks assigned to the Community;

More important still, a link between the subsidies granted for religious instruction and the establishments that organize such an education, on the basis of the concept of "recognized religions".

228. The Court provided a twofold justification for the last-mentioned limitation on subsidies, deducing one main consequence therefrom. That twofold justification related, first, to the fact that the Constitution itself establishes the concept of "recognized religion" (art. 24); secondly, to the fact that control by the Community of the quality of religious instruction is limited by the constitutional freedom of worship and the resulting prohibition on interference therein (arts. 19-21). Consequently, "the right to subsidies for religious instruction can be associated with the intervention of a body

independent of the public authorities which guarantees its authenticity. It is for the denomination concerned, and for it alone, to determine what body is competent to verify that authenticity."

229. The Court recognized that, in the case of internal diversity within a denomination, it may, by delegation, establish a division of competences in response to that diversity, both in matters of organization of the denomination and in determining the content of the religious belief. It considered that it is reasonable for the Community (for example, the decree of the Flemish Community of 27 March 1991 concerning the status of certain members of staff in the subsidized education sector and subsidized psycho-medico-social centres, M.B., 25 May 1991) to require the setting up of a minimum structure for each religion with a view to appointing a body to be recognized as competent to intervene in such matters as the recruitment of teachers of religious instruction courses, where those courses may be in receipt of subsidies from the public authorities.

230. The Act of 29 May 1959 amending certain provisions of the education legislation, known as the Education Pact, includes in its article 8 the obligation for pupils to attend a course of instruction in religion or non-denominational morality in official secondary education establishments. Only religions recognized by the public authorities may be studied in the religious instruction course provided for in article 8. To date, Belgium has recognized six faiths: Catholicism, Protestantism, Anglicanism, Judaism, Islam and the Orthodox Church. The Communities have exclusive competence in matters of education, except in the three cases covered by paragraph 1 (2) of article 127 (see above, para. 224). Only the Flemish Community has included the Orthodox faith - the denomination recognized most recently in Belgium - among the recognized faiths that may be studied in a religious instruction course in application of the 1959 Act (decree of the Flemish Community of 1 September 1989).

231. The Act does not explicitly organize a procedure for exemption from attending courses in religion or non-denominational morality when neither course reflects the philosophical or religious beliefs of the children and their parents. However, a practice has evolved of dispensing pupils from the obligation to attend such courses, and this practice has been sanctioned by the highest administrative court in the country.

232. The Council of State defined its previous rulings more explicitly in 1990, on the occasion of two judgements (C.S., 10 July 1990, No. 35,442 - decision ordering annulment; C.S., 13 November 1990, No. 35,834 - decision ordering suspension). These rulings annul or suspend decisions of public authorities rejecting a request to be exempted from attending courses in religion or non-denominational morality, brought by a parent on behalf of the child. These requests for exemption were brought on the grounds that the religious beliefs of the applicant and his child did not correspond to the religious beliefs taught in the courses in religion or non-denominational morality from which he was asked to choose.

233. The Council of State found that the practice of granting dispensations has as its legal basis the international rules guaranteeing freedom of conscience and the right of parents to respect for their religious and philosophical beliefs in the context of the education provided for their children (inter alia,

article 2 of the First Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms of 6 May 1963). The applicant, who must address his request to the competent public authorities, must show a sufficient degree of determination, seriousness, consistency and interest in his beliefs. The reasons cited for the request must be sufficiently explicit to enable the authority to assess it. The beliefs cited by the parent in support of his request may correspond to a non-recognized religion or a belief for which no course of instruction is recognized. The Court found that, provided such requests are well-founded, the act of forcing the children concerned to attend a course in religion or non-denominational morality constitutes serious harm such as to be difficult or indeed impossible to remedy; and that rejection of such a request by the competent authority is unlawful.

Conscientious objection

234. As the public authorities no longer conduct annual levies of soldiers conscripted for military service, the laws on military service and on conscientious objection, although still in force, are no longer applied in practice, as there are no soldiers performing military service and no conscientious objectors.

Article 19

Public access to the administration

(a) Access to administrative documents

235. Article 32 of the Constitution, concerning public access to the administration, entered into force on 1 January 1995. In referring to article 19 of the International Covenant on Civil and Political Rights and to article 10 of the European Convention on Human Rights, the Belgian legislature intended this article to give constitutional recognition to the public's right of access to the administration; in other words, to guarantee everyone access to administrative documents (Doc. Parl., House, 1992-1993, No. 839/1, 4).

236. Article 32 of the Constitution is worded: "Everyone has the right to consult any administrative document and to be provided with a copy thereof, except in the cases and circumstances provided for by law, decree or the rule referred to in article 134", i.e. the ordinances of the Brussels-Capital Region.

237. This newly incorporated fundamental right is applied at federal, Community and regional levels.

238. In addition to active provision of information (art. 2), the Act of 11 April 1994 on public access to the administration (M.B., 30 June 1994) also guarantees and organizes the passive accessibility of administrative information. The right to consult an administrative document implies that everyone, in accordance with the conditions laid down in law, is permitted to consult any administrative document in situ, to obtain an explanation thereof, and to have a copy thereof communicated to him (art. 4). Article 6 of the Act sets forth exceptions on the basis of which public access may be refused (relatively imperative, absolutely imperative, and relatively discretionary

exceptions). In case of refusal, the interested party may approach the federal authority concerned with a request for reconsideration and simultaneously request the Committee on Access to Administrative Documents to give an opinion on the matter (art. 8). The Act also provides for a right of rectification, where a person can demonstrate that an administrative document contains inaccurate or incomplete information (art. 7).

239. At the level of the Communities and Regions, mention should also be made of:

A Decree of the Flemish Council of 23 October 1991 on public access to administrative documents in the services and institutions of the Flemish Executive (M.B., 27 November 1991);

A Decree of the Council of the French Community of 14 December 1994 concerning public access to the administration (M.B., 31 December 1994);

A Decree of the Walloon Region Council of 30 March 1995 (M.B., 28 June 1995);

An Ordinance of the Regional Council of Brussels of 30 March 1995 concerning public access to the administration (M.B., 23 June 1995).

(b) Obligation to provide supporting reasons for administrative acts

240. Still on the question of preventive legal protection and public access to the administration, mention should also be made of the Act of 29 July 1991 on the formal citing of reasons for administrative acts (M.B., 12 September 1991).

241. The reasons for administrative acts must be formally cited, save for the exceptions provided for in the Act, where stating the reasons for the act may, inter alia: compromise the external security of the State; jeopardize public order; violate the right to respect for privacy; or constitute a breach of the provisions concerning professional secrecy.

Freedom of expression of officials of the federal State and of the Communities and Regions

(a) Federal State officials

242. Article 7 of the Civil Service Regulations now guarantees State officials freedom of expression. This new article was inserted by the Royal Decree of 26 September 1994 (M.B., 1 October 1994). It provides that:

"State officials enjoy freedom of expression concerning the facts of which they are aware through the exercise of their functions.

They are prohibited only from revealing facts with a bearing on national security, the protection of public order, the financial interests of the authority, the prevention and punishment of wrongful acts, medical secrecy, the rights and freedoms of the citizen, and in particular the right to respect for privacy; this is also applicable to facts with a bearing on the preparation of all decisions.

The provisions of the foregoing paragraphs also apply to State officials whose duties have ceased."

243. Article 8 of the revised Civil Service Regulations confers on State officials the right to be informed on all matters useful to the performance of their tasks. Article 9 provides that every State official has the right to consult his personal file.

244. A ministerial circular from the Interior and Civil Service Minister dated 8 December 1994 explains in greater detail the objective practical implementation of the concept of a "right of expression of State officials". (Circular No. 404 - Implementation of the Charter for Users of Public Services (M.B., 22 January 1993) - Right of Expression of State officials (M.B., 23 December 1994).)

(b) Officials of the Communities and Regions

245. The right to freedom of expression and other rights such as those mentioned above are conferred on officials of the Communities and Regions, pursuant to the Royal Decree of 26 September 1994 establishing the general principles of the Civil Service Administrative and Salary Regulations applicable to staff of the services of the Community and Regional governments and of the colleges of the Joint Community Commission and the French Community Commission, and to the public-law legal entities dependent thereon (M.B., 1 October 1994, arts. 3-6).

Freedom and organization of the audio-visual media

(a) In the Flemish Community

246. During the period from 1988 to 1995 the Flemish Community's regulations concerning the audio-visual media were heavily amended, partly with a view to extending guarantees of freedom of expression and pluralism to the audio-visual media.

247. The legislation on the audio-visual media was expanded, particularly on the basis of article 10 of the European Convention on Human Rights, of the Treaty on European Union and of the Council of Ministers' "Television Without Frontiers" Directive of 3 October 1989. During 1995 the various decrees concerning local radio (7 November 1990), public broadcasting (21 March 1991), the regional television companies (23 October 1991), radio and television advertising and sponsorship (12 June 1991), broadcasting authorizations (14 July 1993) and cable broadcasting (4 May 1994) were brought together in a coordinated decree on radio and television broadcasting (Order of the Flemish government of 25 January 1995 coordinating the decrees concerning radio and television broadcasting, M.B., 30 May 1995 and the Decree of the Flemish Council of 8 March 1995 approving the Order of the Flemish government of 25 January 1995 coordinating the decrees concerning radio and television broadcasting, M.B., 31 May 1995).

248. The coordinated decree on broadcasting also contains a number of restrictions on the content of programmes, as detailed in its article 78:

"Broadcasters may not transmit programmes likely seriously to impair the physical, mental or moral development of minors, particularly programmes containing scenes of pornography or gratuitous violence.

This provision also extends to programmes not falling within the scope of the foregoing provision but which are nevertheless likely seriously to impair the physical, mental or moral development of minors, except where it is ensured, inter alia by the choice of time for the transmission of the programme or by technical means, that minors in the reception area do not see or hear these programmes as a matter of course. Broadcasters' programmes must not contain any incitement to hatred on grounds of race, sex, religion or nationality."

249. Public and private broadcasters are also subject to obligations and restrictions regarding programmes, and to particular prohibitions and restrictions regarding advertising and sponsorship on radio and television (arts. 80-90). For example, article 82, paragraph 6, of the coordinated decree of 25 January 1995 stipulates that the transmission of advertising is prohibited in programmes intended for children. With this provision, which, incidentally, has come under vigorous attack from the advertising sector, the Flemish Community went much further than the European Union "Television Without Frontiers" Directive, which provides only that televised children's programmes lasting under 30 minutes may not be interrupted by advertising. The Flemish Community has asked to submit some additional information in this regard (see annex).

(b) In the French Community

250. During the period from 1988 to 1995 the French Community decree on audio-visual media of 17 July 1987 was amended several times, principally so as to abolish the monopoly on advertising enjoyed by the main private television channel (the public service is now also authorized to broadcast advertising), and so as to bring the legislation into line with the "Television Without Frontiers" Directive of 3 October 1989.

251. However, the distribution of foreign channels on cable networks continues to be subject to prior authorization, which may appear to contravene article 2 of the Directive in the case of television channels authorized by the other Member States of the European Union: proceedings on this question brought against Belgium by the Commission of the European Communities are currently before the Court of Justice in Luxembourg.

252. The amendments also include the abolition of the legal category of private regional television channels (no such channel ever having been authorized), the mandatory participation of the public service in the capital of pay television, and the establishment of a committee on advertising standards.

253. All broadcasting activity thus remains subject to a régime of prior authorization and, in the absence of any independent organ to regulate the audio-visual media, it is always the Government that grants, suspends or withdraws authorizations. The provisions concerning the content of programmes

are essentially those set out in the Directive of 3 October 1989, though certain specific provisions are also included in the general terms and conditions of the authorized television channels.

Restrictions on freedom of expression

254. During the period from 1988 to 1995 legislation was promulgated providing for certain restrictions on freedom of expression, as referred to in article 19, paragraph 3, of the Covenant.

(a) Article 378 bis of the Penal Code

255. The Act of 4 July 1989 inserted an article 378 bis in the Penal Code. This article 378 bis contains a specific provision prohibiting publication by the media of the identity of victims of sexual offences (indecent assault or rape). It prohibits "the publication and dissemination, in books, through the press, the cinema, radio, television or in any other manner, of texts, drawings, photographs or images of any kind such as to reveal the identity" of the victims of sexual offences. The publication or dissemination of information such as to reveal the identity of a person is prohibited unless the victim has given written consent or the examining magistrate has agreed thereto for purposes of commencement of proceedings. Violations of this article are punishable by two months' to two years' imprisonment and a fine of between 300 and 3,000 Belgian francs (10 per cent additional legal tax).

256. In other words, article 378 bis of the Penal Code must be seen in the context of article 19, paragraph 3, given that this restriction is intended to secure respect for the rights or reputation of others.

(b) Article 35 of the Police Functions Act

257. Article 35 of the Police Functions Act of 5 August 1992 (M.B., 22 December 1992) provides for a series of restrictions concerning "exposure to the media" of persons arrested, detained or held.

258. The specific provision whereby persons arrested or detained must not be unnecessarily exposed to public curiosity, and whereby the identity of the persons concerned may not be revealed without the consent of the competent judicial authority, applies to administrative or judicial police officials. Nor may police officials subject or allow arrested or detained persons to be subjected to journalists' questions, photograph them or allow them to be photographed, without their consent.

259. This legislation is not regarded as a restriction on freedom of the press, given that the prohibitive provisions apply only to members of the police force. The prohibitive provisions of article 35 of the Police Functions Act are intended in particular to protect the right to privacy of suspects and those arrested.

260. The Committee is also referred to the Minister of the Interior's circular dated 10 October 1995 concerning relations between the police and the press (M.B., 31 October 1995), and to the State Secretary for Security's circular dated 10 October 1995 concerning relations between the fire services and the press (M.B., 9 December 1995).

(c) Strengthening of the Racism Act

261. The Act of 30 July 1981 prosecuting and punishing acts inspired by racism or xenophobia was amended in several places by the Act of 12 April 1994 (M.B., 14 May 1994). The changes chiefly involved redefining the term "discrimination", broadening the scope of the Act, and providing for more severe sentences.

262. The Act now provides for a maximum penalty of one year's imprisonment for public incitement to discrimination, hatred or violence vis-à-vis a person or group on grounds of race, colour, ancestry, national or ethnic origin (art. 1). It punishes with the same maximum sentence anyone belonging to a group or association that manifestly and repeatedly practises or advocates discrimination or segregation or lends assistance thereto (art. 3).

(d) The 1995 Revisionism (Suppression) Act

263. The Act of 23 March 1995 punishes with eight days' to one year's imprisonment and a fine of between 26 and 5,000 Belgian francs (10 per cent additional legal tax) anyone who denies, grossly minimizes, seeks to justify or publicly approves of the genocide committed by the National-Socialist régime in Germany during the Second World War (M.B., 30 March 1995, Err. 2 April 1995; C.A., 12 July 1996, No. 45/96, M.B., 27 July 1996).

(e) Restrictions relating to the suppression of trafficking in persons and child pornography

264. The Act of 27 March 1995 and the Acts of 13 April 1995 (M.B., 25 April 1995) contain a number of penal provisions relating to the suppression of trafficking in persons, child pornography and the sexual abuse of minors.

265. Under article 380 quinquies, paragraph 3, of the Penal Code, advertising containing an offer of or request for prostitution or sexual immorality is prohibited. Advertisements containing an allusion to sexual exploitation in any form are also punishable; as is "anyone who, by means of any form of publicity, incites others, by the allusion contained therein, to exploit minors or persons of full age for sexual ends, or uses such publicity on the occasion of an offer of services." By these provisions the legislature was seeking to prohibit the advertising of "sex tourism" and of covert trafficking in women and children.

266. The Penal Code also contains a provision punishing the advertising of pornographic telephone "chat-lines". Article 380 quinquies, paragraph 2, of the Penal Code punishes "anyone who, by whatever means, provides or arranges the provision of, publishes, distributes or disseminates, directly or indirectly, even when disguising its nature by verbal contrivance, publicity for an offer of services of a sexual nature for the purpose of direct or indirect profit, when those services are provided through a telecommunication medium."

267. Article 383, paragraph 1, of the Penal Code, which is intended in particular to suppress child pornography, punishes "anyone who exposes, sells, hires out, distributes or delivers emblems, objects, films, photographs, transparencies or other visual media which represent sexual acts or positions of a pornographic nature involving or presenting minors under the age of 16; or who, by way of trade or distribution, manufactures or possesses, imports or organizes the importation of such material or delivers it to a transport or distribution agent." Anyone who knowingly possesses the above-mentioned emblems,

objects, films, photographs, transparencies or other visual media is also liable to punishment (Penal Code, art. 383 bis, para. 2).

Endorsement of the Convention on the Rights of the Child

268. The Convention on the Rights of the Child, adopted in New York on 20 November 1989, was endorsed by the Act of 25 November 1991 (M.B., 17 January 1992) and by the decree of the Flemish Council of 15 May 1991 (M.B., 13 July 1991).

269. Particular attention should be drawn to articles 13 (freedom of expression) and 17 (concerning the function performed by the media with respect to children) of the Convention, and to the comments concerning those articles contained in paragraphs 129 to 138 of the initial report of Belgium on application of the provisions of the Convention on the Rights of the Child (CRC/C/11/Add.4). Article 34 of the Convention, under the terms of which States parties are obliged to take all appropriate national, bilateral and multilateral measures to prevent the exploitative use of children in pornographic performances and materials, also merits particular attention (see above).

Amendments to the Opinion Polls Act

270. The Act of 21 July 1991 (M.B., 1 August 1991) introduces amendments to the Act of 18 July 1985 on the publication of opinion polls and conferral of the title "opinion research institute" (M.B., 13 August 1985).

271. The most important change concerns the repeal of article 5 of the Act, which rendered punishable the act of divulging and commenting on the results of opinion polls from the 30th civil day preceding the date of the elections. This temporary prohibition on publishing the results of opinion polls concerning the probable behaviour of the electorate violated freedom of expression and freedom of the press as guaranteed by the Belgian Constitution, by article 19 of the Covenant and by article 10 of the European Convention on Human Rights. The Act now provides for the obligation to communicate a range of data concerning the opinion polls to the opinion polls commission (which has still to be set up). When the results of opinion polls are published in the media, they must be accompanied by various scientific data.

Article 20

272. The Committee is referred to the comments on article 19 of the Covenant and to the information provided by Belgium in paragraphs 9 to 16 of its report on implementation of the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD/C/260/Add.2), submitted in December 1995.

Article 21

Regulation

273. In accordance with article 21 of the Covenant the basic general principle regulating the right of Belgian citizens to meet and assemble is confirmed in article 26 of the coordinated Constitution of 17 February 1994.

274. In non-mandatory order, the federal parliament, the King, the provincial council and the commune council may regulate the exercise of this right where it may have an influence on public order. There is no direct general regulation of the right of assembly at federal level. Various pieces of legislation are invoked, and these must be set in parallel and supplemented by reference to case-law and doctrine.

275. On the basis of the Constitution a distinction is traditionally drawn between three types of meeting: private indoor meetings, public indoor meetings, and outdoor meetings.

(a) Private indoor meetings

276. This type of meeting is entirely unrestricted and is indissociable from another fundamental right, namely, the inviolability of the home (art. 15). Any administrative policing in this context is unthinkable.

(b) Public indoor meetings

277. In this case the Constitution is clear. It provides that such meetings may not be subject to any prior authorization. Administrative policing measures, such as the obligation to provide notification of specific meetings, may be envisaged. Should be need arise, the administrative authority may even prohibit meetings of this type if there is any indication that they pose a risk to public order.

(c) Outdoor meetings

278. For this third type of meeting the authority is free to take any measure it deems necessary for the maintenance of public security, public health and the public peace. In practice, the commune regulations often require prior authorization for the holding of demonstrations and "attroupements" (gatherings) of more than three, four or five people. An attroupement is a gathering of persons, in the open air or a place accessible to the public, accompanied by incidents the intention of which is not necessarily to disturb public order, but which it is reasonable to suppose may pose such a threat. An attroupement is termed "hostile" when there is an actual intention to threaten public order. A "demonstration" is the expression of a collective opinion in the open air, which may possibly but not necessarily be accompanied by incidents or a threat to public order. Thus, not all demonstrations are attroupements.

Authorities and services entitled to intervene in the exercise of this right

(a) Authorities

The bourgmestre

279. As the local authority of first instance, the bourgmestre is responsible for maintaining order and representing public order. Furthermore, in principle he acts merely as the enforcing authority. Nevertheless, in exceptional circumstances he may also take action by means of regulations. His power derives from the Communes Act, and in particular its articles 133, 133 bis, 134, 172, 172 bis and 173.

The Provincial Governor; the district commissioners

280. In the maintenance of law and order the Governor and the district commissioners act as representatives of the central authority. Their powers in this area are set out in articles 128, 129 and 133 of the Provinces Act.

The Minister of the Interior

281. In principle, the Minister of the Interior has only a power to enforce by execution. For the purposes of maintaining public order he may issue orders to the Gendarmerie, give guidelines and orders to the Governor and the district commissioners, and make recommendations to the authorities of the communes.

The King

282. Apart from the King's obvious power of enforcement by execution (as the Government), there is reason to suppose, on the basis of an interpretation of the Constitution, that he also has an independent regulatory power for the purposes of maintaining order and peace.

(b) Police services

283. Article 22 of the Police Functions Act of 5 August 1992 (M.B., 22 December 1992) regulates the powers of the Gendarmerie and commune police over large gatherings, and particularly to disperse gatherings disturbing public order.

284. The explicit intention of the legislature was not to confine the tasks of the police to strict maintenance of order, but, through positive measures, to involve them in a process guaranteeing effective realization of the fundamental right to assemble, meet or demonstrate. Article 1 (2) of the above-mentioned Act states that the police have a mission to contribute to the democratic development of society, ensure respect for, and contribute to the protection of, individual rights and freedoms.

285. In conclusion, it is important to point out that in the absence of a specific provision on the modalities of the right of assembly, reference must be made to the regulations adopted at various levels on the direct basis of the Constitution. It should however be noted that the local authority is in fact the authority closest to the events which may disturb public order, and that consequently it will be able to estimate resources and the consequences at local level rapidly and effectively. That is part of its raison d'être and responsibility. As for administrative policing, the supra-communal authority intervenes only exceptionally, and solely on the basis of its subsidiary competence as set out in the Minister of the Interior's circular of 10 December 1987 concerning coordination in matters of maintenance of order.

Court rulings

286. Broadly speaking it can be said that there are very few court rulings relating directly to the right to assemble and demonstrate. This is chiefly attributable to the fact that in practice, in spite of regulation that is

sometimes very strict, local authorities tend to take an understanding view in most cases. Thus, spontaneous and unforeseen demonstrations are tolerated, provided there is no serious threat to public order.

287. From among the existing court decisions establishing all forms of intervention by the authority, one can highlight a few general basic principles it must take into account when taking policing measures:

Police regulations must always have as their aim material public order. Moral public order is not an issue unless it can explicitly be shown that it is degenerating into or liable to degenerate into material disturbances;

The acts leading to the measures must be sufficiently serious. Justification on the basis of mere possibility is not enough. The authority must provide sufficiently detailed reasons why it thinks the measures must be taken;

With regard to the measures as such, the principle of proportionality requires that they be taken only within the limitations on liberty strictly necessary for the maintenance of public order.

288. Some legal doctrine questions whether, if the administrative authorities responsible for public order regulate outdoor meetings and require prior authorization for them, such a manner of proceeding is in conformity with international treaties and, in particular, with the European Convention on Human Rights and the Covenant. While the Constitution draws a distinction between meetings on the basis of their character, the same is not true of the corresponding provisions of the international treaties. Those treaties simply refer to the requirement of proportionality in any limitation of the right of assembly. A total prohibition on meeting would probably be incompatible here, for it implies that meetings or demonstrations are permitted only with the authorization of the bourgmestre. A prohibition on assembly would certainly also be invalid, as not all gatherings result in a danger to public order and security. Furthermore, care must always be taken to ensure that any prohibition falls squarely within the limitations defining possible disturbances of public order. To date, neither the Council of State nor the Court of Cassation has compared these provisions with those of the international treaties.

Article 22

289. The coordinated Constitution of 17 February 1994 confirms freedom of association (art. 27). The Constitution also proclaims new, so-called "second-generation" freedoms. These are the economic, social and cultural rights referred to in article 23 of the Constitution. They include, among others, the right to information, the right of consultation and the right of collective bargaining.

Examples of court decisions

290. During the period under review several decisions of the Council of State, the Court of Cassation and especially the Court of Arbitration have resulted in a more precise definition of some modalities of freedom of association.

291. Freedom of association, as guaranteed by the Constitution, does not exempt private organisms that wish to collaborate closely with a public-law establishment from being subjected to operational and monitoring modalities justified by the particular nature of that relationship, including recourse to public means (C.A., 11 February 1993, No. 10/93, M.B., 9 March 1993).

292. The Court of Arbitration was called upon to hear an appeal concerning an Act of 24 July 1992, imposing limitations on the freedom of association, freedom to form trade unions and right to strike of personnel on the Gendarmerie's active list. It found that the provision of that Act prohibiting affiliation to political parties or groups pursuing political ends, in the name of the neutrality and availability for duty of the Gendarmerie's operational units, is manifestly disproportionate to the objective pursued, as such affiliation is not such as to jeopardize that neutrality or availability for duty. On the other hand, the provisions aimed at guaranteeing a necessary minimum of representativity within the professional associations were deemed not to be disproportionate to the requirements of the smooth running of the Gendarmerie (C.A., 15 July 1993, No. 62/93, M.B., 5 August 1993).

293. The Order of Physicians and the Order of Pharmacists are public-law institutions created under the Act. Bringing together all members of the profession on a compulsory basis, they can in no sense be regarded as associations within the meaning of the Constitution (C.A., 29 September 1993, No. 68/93, M.B., 28 October 1993).

294. The right to form an association, as guaranteed by the Constitution, does not mean that the legislature is obliged to give citizens forming associations the means with which to develop a specific economic activity (C.A., 7 December 1993, No. 84/93, M.B., 28 December 1993).

295. The right of public-service employees to form trade union organizations may be subjected to restrictions in the name of the requirements of the public service, the extent of the limitation varying with the task of the public administrative body and the functions of the staff members concerned (C.S., No. 35,736, 30 October 1990, Rechtskundig Weekblad 1991-1992, 330).

296. According to the Council of State, exercise of the right to strike by public officials cannot in itself justify disciplinary sanctions; sanctions are justified only in case of abuse of the right to strike (C.S., 22 March 1995, No. 52,424).

297. Article 27 of the Constitution recognizes the right of association and prohibits the subjection of that right to preventive measures. That provision does not mean, however, that the legislature would be prohibited from regulating the exercise of that right. Thus, the provisions adopted by the legislature imposing on clinical biology laboratories a general duty to make public their

participation in other legal persons or companies with a view to securing greater transparency in the clinical biology sector do not violate freedom of association (C.A., 10 May 1994, No. 37/94, M.B., 27 May 1994).

Right to strike

(a) General

298. The right to strike, or rather, freedom to strike, is implicitly recognized in Belgium, inter alia, in the Act of 19 August 1948 on provision of public services in time of peace, which allows workers to be requisitioned for "indispensable tasks". That Act has the effect of limiting the right to strike and the damage to the general interest it involves. Other regulations include provisions concerning strikes:

The Act of 5 December 1968 on collective labour agreements and joint committees, and in particular its article 38 (2), which confers on the joint committees the tasks of prevention and conciliation in any dispute between employers and workers;

The collective labour agreements themselves, which provide for conciliation procedures prior to the initiation of a strike or lock-out;

The Royal Decree of 6 November 1969 providing for the establishment of conciliation bureaux.

299. Other regulations attempt to alleviate the harmful effects of the strike on the strikers themselves: strike days are deemed to be working days for purposes of granting social security benefits (unemployment, sickness and disability, family allowances, occupational injury, retirement pension), and also in connection with holidays and annual leave.

300. When the collective dispute is not resolved through conciliation, one of the parties brings the matter before the courts. In recent years recourse to the courts, usually on the employer's initiative, has become increasingly frequent. Employers incapacitated by unofficial strike action (e.g. a wildcat strike) see this as a means of obtaining an immediate solution so as to enable their firm's activity to continue. They make a unilateral application to the civil court of first instance to halt what they consider to be flagrant irregularities on the part of the workers or their representatives. The concept of "flagrant irregularities" is based on interpretations made in court rulings, which are thus empirical. In non-adversarial relief proceedings, the courts make an order prohibiting persons unspecified from committing such acts, under pain of severe default fines. In certain cases these orders are tantamount to a denial of the right to strike.

301. A first measure to put Belgium's machinery for conciliation of collective disputes back on track was the tabling of proposed legislation (Doc. Senate, 1260-1, 1994-1995) to amend the Judicial Code so as to limit the jurisdiction of the judicial branch to matters strictly necessary for safeguarding the means of production, by reducing recourse to unilateral applications, limiting the effect of an order to the parties to the case at issue, and ordering default fines only where provided for by law. However, the Government does not intend to allow the

matter to rest there, and envisages fuller legislation to resolve all the issues still pending in connection with the right to strike (Federal Government programme guidelines, 18 June 1995).

(b) The right to strike in the public services

302. With the exceptions of article 16 of the Act of 14 January 1975 regulating discipline in the armed forces, which prohibits military personnel from resorting to any form of strike action, and of article 24/11 of the Act of 27 December 1973 on the status of personnel on the active list of the operational units of the Gendarmerie, which also prohibits gendarmes from engaging in any form of strike, no legislation prohibits recourse to strike action in the public services.

303. Thus, in accordance with article 6, paragraph 4, of the European Social Charter, members of staff of the public services enjoy the right to strike. As announced in paragraph 203 of the previous report (CCPR/C/57/Add.3), Belgium has now ratified the European Social Charter, which entered into force with respect to it on 15 November 1990, as well as, in 1991, International Labour Organization Convention No. 151 concerning Protection of the Right to Organize and Procedures for Determining Conditions of Employment in the Public Service.

304. Except for a small number of provisions that are applicable only to a specified public service or a specified category of staff (e.g. the postal service, civilian staff of the Gendarmerie), there is no legal framework governing the initiation and progress of a strike. Exercise of the right to strike is thus not confined to trade unions, and no prior notification of a strike is required. There are no statutory provisions organizing basic minimum services in the event of a strike. In practice, in vital public services (such as public hospitals) trade union organizations and the authorities cooperate to ensure that a basic minimum service is provided (for example, by providing the same reduced service normally provided at weekends or on public holidays). In some other public services, where continuity of the service is vital (e.g. prisons, commune policing), the Gendarmerie safeguards public security in the event of a strike.

305. Provisions exist allowing certain authorities to requisition persons (whether or not public-service officials) or property in order to meet vital needs. These provisions do not specifically cover the case of strike action. Moreover, in a decision of 28 February 1990 (No. 34,252) the Council of State decided that the Royal Decree of 27 July 1950 "determining vital needs to be met in implementation of the Act of 19 August 1948 concerning provision of public services in time of peace", on which ministerial orders requisitioning personnel from certain public services were based, lacked the legal basis enabling it to be applied to the public sector.

306. Article 44 of the Royal Decree of 26 September 1994 establishing the general principles of the Civil Service Administrative and Salary Regulations applicable to staff of the services of the Community and Regional governments and of the colleges of the Joint Community Commission and the French Community Commission, and to the public-law legal entities dependent thereon, provides that "participation by the official in a concerted work stoppage cannot entail consequences for that official other than loss of salary". Thus, the official's

career is not damaged (he retains seniority for administrative and salary purposes). The amount of salary withheld is proportional to the length of the absence.

Trade union representation

307. As regards trade union representation on the National Labour Council (CNT), this respects the old criteria, recognizing trade union pluralism at interprofessional and sectoral levels in the private and public sectors. In 1995 traditional representation of employers on the CNT was extended to include non-market enterprises. "The members representing the most representative organizations of employers in the non-market sector shall be involved as "associate members" in the work of the National Labour Council. At their request, their positions may be recorded in an annex to the opinions." (Royal Decree of 7 April 1995; M.B., 17 May 1995). The non-market enterprises are grouped into a pluralistic confederation bringing together the active federations in a non-profit-making association, the CENM. These enterprises account for about 300,000 persons. Workers from these branches are represented by the trade union organizations of the services: banks, commerce, socio-cultural activities and health. The purpose of extending employer representation on the CNT is to benefit from the presence of a sector based on principles other than those of the market economy pure and simple, without the profit motive that drives firms, and with a commitment to social solidarity.

Protection of trade union delegates

308. The Act of 19 March 1991 establishing a special régime for dismissal regulates the special protection against dismissal enjoyed by permanent and alternate delegates representing workers on councils and committees, as well as unelected candidates for election to those bodies. The new Act brings innovations to the 1948 and 1952 Acts in the following areas:

Definition of the serious grounds referred to in the Contracts of Employment Act, which must now be the subject of prior recognition by the labour court;

The obligation to inform the protected worker and his organization of the acts of which he is accused;

A five-day prior negotiation procedure before the commencement of proceedings in the labour courts, intended to avert dismissals;

Improvement of court procedures;

Protection of the worker during the proceedings (additional unemployment benefits, possible suspension of the contract of employment, etc.);

Adjustment of the procedure for dismissal on economic or technical grounds: the joint committee with which the enterprise is associated must first unanimously accept the grounds for withdrawing protection. If the joint committee declines to do so, proceedings are initiated before the labour court.

309. Protection of the worker is manifestly improved and, without calling into question freedom to dismiss workers, the 1991 Act makes their dismissal more costly for the employer. Although the new Act has given rise to a good deal of criticism and a number of problems, largely of a procedural nature, it has achieved one of its essential aims, namely, to increase recourse to negotiation and reduce the volume of litigation.

Rate of trade union membership

310. A Belgian research centre has calculated the rate of trade union membership among Belgian workers up to 1991. According to the unofficial figures contained in that study, published in 1993, the rate rose from 42.85 per cent of workers in all categories in 1947 to 76.61 per cent in 1991; with a spectacular increase among manual workers (from 50.51 per cent in 1947 to 98.25 per cent in 1991); and from 23.59 per cent in 1947 to 35.59 per cent in 1991 in the case of non-manual workers. In the public sector 55.81 per cent of employees were members of trade unions. These figures can be seen to be substantially higher than those published by the Organization for Economic Cooperation and Development (OECD), which deducts a number of trade union members not in employment (unemployed workers, persons receiving invalidity pensions, pensioners, students) and applies an automatic adjustment to bring the reckoning method into line with those used in other OECD member countries.

Article 23

311. The coordinated text of the Constitution of 17 February 1994 refers to marriage and family life in its articles 21 (1) and 22 (1) (see comments on articles 18 and 17 of the Covenant respectively).

Limitations on the right to marriage

312. The Court of Cassation and the Council of State - respectively the country's highest judicial and administrative courts - have defined the limits of the right to marriage established by article 23.

313. The Court of Cassation (Cass. (ch. 1), 19 March 1992, Pasicrisie, 1992, I, 659-660) ruled on the case of a fake marriage that had been annulled on those grounds by a court of appeal. It considered that the annulment of a marriage on the grounds that it has been faked does not violate the right of the individuals concerned to contract a valid marriage.

314. The Council of State considered the problem of aliens who have been ordered to leave the territory having resided illegally and who invoke the right to marriage in order to obtain a suspension of that decision. Two types of case arose in this connection. First there was the case of a foreign woman ordered to leave the territory and married to an alien authorized to reside in Belgium, where he was engaged in university studies. The Council of State (C.S., 2 April 1992, No. 39,154) decided that article 23 of the Covenant was intended only to secure the protection of marriage and that an order to leave the territory does not affect that right with respect to a person already married. Secondly, a number of decisions found that an order to leave the territory does not conflict with the right to marry, either because it is distinct from a

refusal by the civil registrar to perform the marriage ceremony, or because the right to marry cannot constitute an obstacle to a measure to remove an alien residing unlawfully. Consequently, the applicant cannot invoke an infringement of the right to marry as the basis for an application for suspension of the order to leave the territory (C.S., 15 April 1992, No. 39,218; C.S., 19 June 1992, No. 39,756).

Equality of rights and responsibilities of spouses

315. As for appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage during the marriage, the Court of Arbitration delivered a decision on the Act partially decriminalizing abortion. That Act makes no provision for involving the husband in the decision concerning interruption of the pregnancy, nor for any obligation to obtain his opinion or to inform him when such a decision is envisaged. The Court considered that even a broad interpretation of article 23 of the Covenant does not make it possible to include therein procedural rights such as those that would derive from the right of the husband to be consulted and would have a bearing on the right to bring the matter before a court when the wife expresses the intention of interrupting her pregnancy (C.A., 19 December 1991, No. 39/91, M.B., 24 January 1992).

Dissolution of marriage

316. The Act of 30 June 1994 (M.B., 21 July 1994) amending article 931 of the Judicial Code and the provisions concerning divorce procedures completely recast those procedures with a view to simplifying them and rendering them more compassionate. With regard to divorce on specified grounds, the main changes are the abolition of the preliminary phase (appearance at conciliation and suspension of the authority to take proceedings); institution of proceedings by direct summons rather than by petition, as previously; acceptance of the supplementary claim system (possibility of invoking new facts not mentioned in the writ of summons, without having to submit a new petition); the pronouncement (and granting) of the divorce decree by the court; automatic recording of the decree in the civil register; referral to the President of the court (for interim measures) by means of the same summons as that containing the petition for divorce; and the suppression of unnecessary publicity (in case of default) and of suspension of judgement.

317. With regard to divorce by mutual consent, the simplified procedure is reflected in the requirement to take an inventory, which has been made optional; in the pronouncement (and authorization) of the divorce decree, which is recorded in the civil register at the suit of the registrar; and in a substantial reduction in the length of the procedure (to three months instead of one year). Provisions have also been adopted on the amendment of prior agreements both during and after the proceedings, and on the control exercised by the crown procurator and the judge over agreements concerning minors.

318. Proceedings for divorce on specified grounds fall exclusively within the jurisdiction of the courts of first instance. In the context of this form of divorce the only court with jurisdiction is that of the district in which the couple had their last matrimonial home or in which the respondent has his or her domicile (art. 628 of the Judicial Code). Proceedings are instituted by summons

(art. 1254). If both spouses are present at the introductory hearing, and at the request of at least one of them, the judge will attempt a reconciliation. Where applicable, the judge ratifies the parties' agreement on interim measures (valid in principle for the duration of the proceedings) concerning their persons, maintenance and goods. If he deems it appropriate, he also ratifies any agreement there may be between the parties on interim measures concerning their children's persons, maintenance and goods. In the absence of a ratified agreement he refers the case to the first available hearing of interim relief proceedings (art. 1258), at which the President of the court, or the judge exercising those functions, will himself establish such measures. It is he who is empowered to order, at the request of the parties, interim measures concerning them or their children throughout the duration of the proceedings (art. 1280). If the acts invoked as grounds are established, the court pronounces the divorce decree. When that decree is no longer subject to opposition, appeal or judicial review, a copy is sent to the competent civil registrar to be entered in the civil register (art. 1275).

319. Spouses who wish to divorce by mutual consent must first settle their respective rights and draw up agreements in writing settling their place of residence during the proceedings, the situation of the children and the contribution to their maintenance, the amount of any maintenance payments and arrangements for indexing or reviewing them (arts. 1287 and 1288 of the Judicial Code). The petition is addressed by application to the court of first instance chosen by the spouses (art. 1288 bis). They then appear together twice (or more often, if article 1290 or article 1293 is applied). The court pronounces the divorce decree if it considers that the parties have satisfied the conditions and complied with the formalities provided for by law (art. 1298). A copy of the decree is sent to the civil registrar to be entered in the civil register. During the proceedings the judge may delete or amend provisions concerning minors that are contrary to their interests. He may also hear the children concerned (arts. 1290 and 1293).

Protection of children in the event of dissolution of marriage

320. The Act of 30 June 1994 amending the Judicial Code adds new provisions to the Code, intended to secure the necessary protection for children, particularly in the event of dissolution of marriage. The Act incorporates into article 931 of the Judicial Code the possibility for a minor capable of due discernment to be heard by the judge or a person appointed by him, without the parties being present, in any proceedings concerning him. The child participates at his own request or following a decision by the judge.

Exercise of parental authority

321. The Act of 13 April 1995 concerning the joint exercise of parental authority introduced into Belgium the legal principle of the joint exercise of parental authority by each of the child's parents. This means that, provided the exercise of parental authority is not regulated in accordance with other procedures under the terms of an agreement concluded between the father and mother or by a judicial decision, the parents - whether or not they are married, whether or not they are separated - exercise the various prerogatives of parental authority jointly; in other words, both together (or to the same extent). Consequently both father and mother participate in the exercise of

custody over the child and, if they are separated, share that custody. It is no longer divided up into a right of custody and a right to visit (or, to use the new terminology, a "right to personal relations"). Each parent also participates in the exercise of the right to educate the child and, if they are separated, shares in the important educational decisions affecting the child. If, under the terms of an agreement concluded between the parents or by a judicial decision, the exercise of parental authority is regulated differently, authority over the child's person may be divided, so that one parent will have the right of custody and the right to educate the child, while the other will continue to have a right to personal relations and a right of supervision. The right to personal relations can be withdrawn only for a very serious reason.

322. The same Act also expressly grants the grandparents, or any third party who can prove the existence of a special bond of affection with the child, the right to maintain personal relations with the child.

323. Lastly, it should be pointed out that in this matter as in others, the best interests of the child are a dominant consideration in any decision or measure taken concerning him.

Article 24

324. The Committee is referred to the report and additional replies submitted by Belgium to the Committee on the Rights of the Child in 1994 and 1995 (CRC/C/11/Add.4, 6 September 1994; CRC/C/SR.222, 6 June 1995; CRC/C/SR.223, 8 June 1995; CRC/C/SR.224, 9 June 1995; and CRC/C/15/Add.38, 20 June 1995).

325. It should be mentioned that in the context of Belgium's ratification of the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption, consideration is currently being given to reforming the Belgian legislation on adoption with a view to bringing it into line with the provisions of that Convention. It is intended eventually to conduct a comprehensive revision of the legislation so as to guarantee the best interests of the child, inter alia, by making recourse to mediation through approved bodies compulsory.

Article 25

Institutional reforms

326. Following the most recent institutional reforms, the composition of the country's various legislative assemblies and the procedures and conditions for the election or appointment of their members have been substantially amended. On this point the Committee is referred to the core document (HRI/CORE/1/Add.1/Rev.1).

Compulsory voting

327. New article 62 of the Constitution (former article 48) retains the provision whereby voting is compulsory. The comment made by the Belgian Government in paragraph 238 of its previous report (CCPR/C/57/Add.3) continues

to be relevant, particularly as the laws regulating elections to the legislative assemblies of the federated entities confirm the obligation to vote. Among such provisions are article 26 bis of the Special Act of 8 August 1980 on institutional reforms, inserted by article 15 of the Special Act of 16 July 1993, which provides for compulsory voting in elections to the Walloon Region Council and the Flemish Community Council; article 4 of the Act of 6 July 1990 regulating procedures for the election of the Council of the German-speaking Community; article 21 of the Special Act of 12 January 1989 relating to Brussels institutions (M.B., 14 January 1989; Err., M.B., 16 March 1989); and article 39 of the Act of 23 March 1989 on the election of the European Parliament (M.B., 25 March 1989).

Voting by secret ballot

328. The constitutional and statutory provisions providing for compulsory voting (see above) also provide for votes to be cast by secret ballot. With the adoption of the Act of 19 July 1993 completing the federal structure of the State and amending the Act of 23 March 1989 on the election of the European Parliament (see above), a question arises as to limitations on voting by secret ballot: the 1993 Act introduces the possibility for voters actually resident in Fourons and Comines-Warneton to vote in another electoral district in order to exercise their right to vote with respect to the electoral lists for another electoral college (see above). The question first arose in 1988 when the Act of 9 August 1988 (M.B., 13 August 1988), known as the "Community Pacification Act", introduced the same possibility into article 89 bis of the Electoral Code for elections to the Chamber of Representatives and the Senate. In the Opinion delivered by the legislative section of the Council of State before the adoption of the Act, some members of the Council of State expressed the view that the principle of voting by secret ballot was violated (Doc. Parl., Senate, Special Session 1988, No. 371/1, p. 69). The Government, when putting the text to the vote unchanged, replied that secrecy of voting was preserved because the act of attending another polling station "provides no information as to the political preferences of the person concerned" (Pasinomie, 1988, p. 890). A narrow interpretation was thus applied to the concept of "voting by secret ballot".

Foreign nationals' right to vote and stand as candidates

329. At present article 8 of the Constitution continues to restrict exercise of the main political rights, namely, the right to vote and to stand as a candidate, to persons holding Belgian nationality. However, the adoption of the Treaty on European Union, and in particular its article 8b, obliges the Belgian State to amend its legislation. Article 8b provides that foreign residents who are nationals of a Member State of the European Union shall have the right to vote and to stand as candidates in European Parliament elections and municipal elections, under the same conditions as nationals. The Council of State and the Government have stressed the need to amend the Constitution in order to comply with the requirements of the Maastricht Treaty. Consequently, the key issue in amending the constitution is the precise wording of the new text. If it restricts access to the rights to vote and stand as a candidate solely to European nationals, it will be technically difficult, in the medium term, to extend those rights to non-European aliens. If, on the other hand, the new constitutional provision includes an open-ended formulation, allowing eventual access to those rights by categories of alien other than Europeans, then there will no longer be any constitutional bar to so doing, as and when the extension

comes to command a political majority. Be that as it may, as in elections to the European Parliament, European Union nationals will be able to take part in the next commune elections, which are to be held in the year 2000.

Public grants to political parties

330. The Act of 10 April 1995 adds an article 15 bis to the Act of 4 July 1989 concerning the limitation and control of electoral expenditure incurred for elections to the federal Chambers and the financing and transparency of accounts of the political parties (M.B., 15 April 1995). This article creates a new condition for the granting of the public allocations to the political parties, established by the 1989 Act. These allocations will be granted only on condition that the parties concerned have inserted certain provisions in their statutes and programmes by 31 December 1995 at the latest. The text in question is one whereby the party "undertakes to respect, in the political action it intends to pursue, at least those rights and freedoms guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 [...] and by the Protocols to that Convention in force in Belgium, and to ensure respect for those rights and freedoms by its various constituent parts and by its elected representatives".

331. Before the adoption of the Act of 4 July 1989, Belgium's legislation envisaged neither the limitation of expenditure nor any control of the political parties, no statutory definition of which had been established. Private financing consisted partly of donations and bequests, both from individuals and from enterprises. These donations were not subject to any statutory limitation and were exempt from taxation, within the limits of the tax legislation. The Act of 18 June 1993 amended the Act of 4 July 1989, reserving the right to make donations to political parties solely to individuals, and excluding companies or associations. The Act also abolished the tax-deductible status of donations.

Electronic voting

332. The Act of 11 April 1994 (M.B., 20 April 1994; Err., M.B., 30 April 1994) organizing automated voting enables elections to be organized electronically, regardless of the type of election being organized. Apart from the transformation of the manual procedure into a computerized one, this Act has no effect on the actual voting process. In particular, it allows voters, as in a manual vote, to cast a vote or deposit a blank or void ballot paper. The Act was implemented, inter alia, by the Royal Decree of 18 April 1994 designating electoral districts for purposes of an automated voting system (M.B., 23 April 1994) and by the ministerial order of 26 August 1994 determining, in the districts and communes using an automated voting system, the order in which the votes are cast in the event of simultaneous elections (M.B., 31 August 1994).

Access to public service

(a) Access to established posts in public service

1. Officials of the Communities and Regions

333. The Royal Decree of 26 September 1994 (M.B., 1 October 1994) establishing the general principles of the Civil Service Administrative and Salary Regulations applicable to staff of the services of the Community and Regional governments and of the colleges of the Joint Community Commission and the French

Community Commission, and to the public-law legal entities dependent thereon, obliges the Communities and Regions to bring the regulations applicable to their officials into line with article 48 of the Treaty of Rome of 25 March 1957, which lays down the principle of freedom of movement for workers, and with the criteria established in that regard by the Court of Justice of the European Communities.

2. Federal State officials

334. Established posts are opened up to citizens of the European Union by article 16 of the Royal Decree of 2 October 1937 setting forth the Civil Service Regulations, as amended by the Royal Decree of 26 September 1994 reforming various Civil Service Regulations. As regards the scientific and non-scientific staff of federal State establishments, established posts are opened up to European Union citizens by article 7 of the Royal Decree of 21 April 1965 setting forth the regulations applicable to scientific staff of scientific establishments of the State, as amended by a Royal Decree of 30 May 1994, and by article 6 of the Royal Decree of 16 June 1970 setting forth the regulations applicable to auxiliary research staff and management staff of scientific establishments of the State, as amended by a decree of 30 May 1994.

335. The result of these measures is that the federal Civil Service is now open to citizens of the European Union subject to the same conditions as those imposed on Belgians. However, article 48 (4) makes an exception in the case of posts typical of the specific activities of the public administration in so far as it is vested with the exercise of public authority and with responsibility for safeguarding the general interests of the State and of the other public authorities. In view of the imprecise nature of this notion, which readily lends itself to broad interpretation by administrative bodies, the Minister for the Federal Civil Service issued an interpretative circular specifically addressed to the federal public services on 24 February 1995, which nevertheless leaves it to each department to decide whether the exercise of the duties attaching to a vacant post involves participation, direct or indirect, in the exercise of public authority, and, on a case-by-case basis, whether the post to be filled is or is not accessible to a citizen of the European Union.

336. In its decision of 11 January 1995 (No. 51,104, Chr. DS, 1995, 172) the Council of State found that the deferment of a prize-winning French candidate's taking up her duties as an editor until such time as she had acquired Belgian nationality was unlawful, on the grounds that the administrative authority in charge of recruitment (SPR) had not distinguished, "among the posts mentioned in the list of options submitted to the person concerned, between those that were to be regarded as relating to the exercise of public authority and those that could not be so regarded".

337. In this connection it should be recalled that the European Commission considers that activities specific to the public administration, such as the army, the police, the magistracy, tax administration and diplomacy, may be reserved for nationals; but that, conversely, foreigners who are nationals of the European Community should be able to have access to bodies responsible for managing a commercial service (public transport, electricity or gas distribution, air or sea transport companies, posts and telecommunications, radio and television broadcasting bodies), operational public health services,

public-service education, and civil research in public institutions (Communication 88/C7203, Official Journal of the European Communities No. C72/2, 18 March 1988, pp. 2-4). Against that background a recent judgment of the Court of Justice found that Greece had failed to comply with the principle of non-discrimination in matters of free movement of teaching staff by maintaining stricter terms of recruitment for foreign teachers (CJEC, 1 June 1995, Communities v. Greece, C-123/94).

338. Furthermore, the second sentence of article 10, paragraph 2, of the Constitution, namely, "They [Belgian citizens] alone are admissible to civil and military offices, with such exceptions as may be established by law to cover particular cases", has been submitted for revision, with a view to bringing this provision of our fundamental instrument into line with the case-law of the Court of Justice in Luxembourg (see the announcement on the review of the Constitution published in the Moniteur belge on 12 April 1995).

(b) Access to contractual posts in public service

339. As regards contractual posts in the federal Civil Service, a Royal Decree of 13 April 1995 (M.B., 29 April 1995) amended the Royal Decree of 18 November 1991 establishing the conditions for engagement by contract of employment in certain public services. In future, only those functions involving participation, direct or indirect, in the exercise of public authority and those intended to safeguard the general interests of the State may be performed contractually exclusively by Belgians. The following public services are directly concerned: the State administrative bodies and other services of the Ministries; and public-interest bodies dependent on the central authority whose staff are subject to the Royal Decree of 8 January 1973 setting forth the regulations applicable to staff of certain of those bodies.

340. As regards contractual public service posts at Community and Regional levels, an Order of the Flemish government organizing the Ministry of the Flemish Community and its staff regulations, dated 24 November 1993, opened up contractual posts to non-European Union citizens, subject to the usual restrictions with regard to participation in direct or indirect exercise of public authority.

341. As regards contractual posts in the services of the communes, by analogy with the new provisions concerning access by European Union nationals to established public-service posts, it would appear that the same principles must apply to posts at commune level. Thus, in the services of the communes, it is likewise for the recruiting authority to determine whether the posts to be filled may or may not be reserved for nationals on the basis of the criteria established in that regard by the Court of Justice of the European Communities. The Minister-President of the government of the Brussels-Capital Region, in his capacity as supervisory authority for the communes of the Brussels area, has already had occasion to draw the case-law of the Luxembourg Court of Justice to the attention of one Brussels commune.

(c) Equal opportunities

342. There is no discrimination on grounds of sex at the level of access to posts in the federal administration. An Economic Reorientation Act of

4 August 1978 established the principle of equal treatment of men and women in matters of access to employment, training and promotion. Article 119 of that Act allows measures to be taken to correct de facto inequalities that may affect women's opportunities in these various fields. Such de facto inequalities may be eliminated by a policy of positive action, the purpose of which is to enable women to overcome the social or other handicaps hindering their professional prospects.

343. As already stated in the present report (see para. 40 above, concerning article 3 of the Covenant), a Royal Decree of 27 February 1990 implementing the above-mentioned Act of 4 August 1978 provides for positive action to be taken in the public sector by means of equal opportunity plans. It should be noted that the scope ratione loci of that Royal Decree extends beyond the federal administration, being applicable to all services of the State (including those assisting the judiciary), to the services of the governments of the Communities and Regions, to all public-interest bodies subject to the authority, the monitoring or the supervision of the State, to the provinces, the communes, and public institutions subordinate to the communes.

(d) Court decisions

344. When considering the court decisions of recent years, several criteria determining conditions for equality of access to public service may be identified:

The need to design a lawful and equitable organic framework. Thus, the courts found: (i) that the State is obliged to adapt its organic framework with a view to respecting linguistic parity (Brussels, 28 November 1994, Revue de jurisprudence de Liège, Mons et Bruxelles (JLMB), p. 1,108); (ii) that the engagement of contractual staff must remain the exception and that it is especially appropriate in the case of temporary posts (Mons labour court, 20 January 1992, JLMB, p. 1,121); (iii) that abuse of the purpose of this form of engagement by a public body is unlawful (Brussels, 28 November 1994, JLMB, p. 1,108); (iv) that systems of reserved quotas - the effect of which is to prohibit the administration from awarding the top grading when the number of other officials deserving it reaches the quota set - are discriminatory (C.S., 31 May 1994, Nos. 47,689 and 47,691, M.B., 20 July 1994). In this context the Court of Arbitration declared that article 20 of the Act of 16 July 1973 (M.B., 16 October 1973), guaranteeing the protection of ideological and philosophical tendencies, was unconstitutional in that it prescribes the need for a balanced division between those tendencies when recruiting and promoting such officials. The Court of Arbitration considered that that provision leads to an inequality of treatment calling into question principles relating to privacy and freedom of expression, as officials may find themselves placed at a disadvantage, in spite of their merits, because of their ideological or philosophical beliefs or through availing themselves of their right not to state their views publicly (C.A., 15 July 1993, No. 65/93. Arrêts de la Cour d'Arbitrage, p. 715);

The need for an objective prior evaluation of candidates, conducted in accordance with a lawful procedure implying proper deliberation, the

information concerning which is communicated to the candidates (C.S., No. 46,835, 31 March 1994, Arresten van de Raad van Staat, 1994, C.S. No. 50,972, 23 December 1994, TBP, 1995, p. 52);

As for the lawfulness of the procedure, the courts found: that the executive cannot rest content with following the advice of the board of managers, without considering, in the case of each post, whether there is not a case for making an exception to the opinion of the management committee (C.S., 5 June 1990, No. 35,046, Rechtkunsdig Weekblad, 1990-91, p. 1,125); that the authority vested with the power of appointment is obliged to carry out a proper comparison of candidates' qualifications and merits (C.S., 27 July 1990, Arr.R.v.St., sp, C.S., 24 November 1992, No. 41,133, Arr.R.v.St. 1992 and C.S., 23 September 1993, No. 40,474, Administration publique, 1992, 177, C.S., 20 March 1992, Arr.R.v.St. 1992); that the fact that a single individual meets the special conditions for the appointment is not in itself enough to make those conditions discriminatory (C.S., 25 January 1991, No. 36,303, TBP, 1992, p. 346); that the principle of equal access to public service is not violated when procedures initiated simultaneously do not terminate at the same time (C.S., 18 October 1990, No. 35,693, Arr.R.v.St. 1990, sp); that the examining board cannot base itself solely on methods of assessment which are not - or not entirely - self-sufficient (C.S., 22 June 1993, No. 43,418, Arr.R.v.St. 1993); that the Council of State may invalidate part of the examination if the questions are not bona fide examination questions or if they are intended solely to baffle the candidate (C.S., No. 39,350, 11 May 1992, Administration publique, 1992, p. 118); that while it is not necessarily unlawful to take a candidate's political leanings into account, albeit exceptionally (C.S., 10 November 1992, No. 40,987, Arr.R.v.St. 1992), the constitutional principle of equality has been violated when it is proven that an appointment to the public service has been made on the basis of recommendations of a political nature (C.S., No. 43,310, 15 June 1993, Arr.R.v.St. 1993);

As for the communication of results to candidates, the courts found that notification of a candidate's failure to pass the psycho-technical test as grounds for failing the examination was lawful (C.S., 12 July 1993, No. 43,782, Recueil des arrêts du Conseil d'Etat, 1993); and that the reservations expressed at the time the candidate passed the examination cannot be invoked by the authorities without limitation of time; for "to decide otherwise would be tantamount to accepting that there is no limitation on the time within which an administrative act may be withdrawn" (C.S., 21 June 1993, No. 43,406, Arr.R.v.St. 1993).

Article 26

345. The Committee is referred to the comments on article 2 of the Covenant (paragraphs 2 to 26 of this report).

Article 27

346. Like other national or international legal orders, the Belgian legal system protects certain minorities through two categories of rights and freedoms: first, human rights and fundamental freedoms are enjoyed by all, without any form of discrimination; secondly, institutional provisions are

intended to ensure that persons belonging to minorities - in that capacity, and not as component individuals thereof - receive the special protection that is the corollary of real and effective equality.

347. The preferential treatment accorded to certain minorities under Belgian law is ensured by means of mechanisms most of which are already long-established and which have been introduced in pace with the gradual federalization of the country, to secure them against the risks of abuse resulting from the new structures and institutions. The institutional reforms implemented in 1993 essentially confine themselves to strengthening existing mechanisms while introducing a few sporadic innovations. Broadly speaking, they consist of a number of measures to protect French-speakers at federal level; a number of measures to protect ideological and philosophical minorities in general; and lastly, a number of measures to protect linguistic minorities in specific parts of the territory.

348. The following paragraphs provide a few examples.

Linguistic minorities

349. Article 143, paragraph 1, of the Constitution affirms the principle of federal loyalty. The duty of federal loyalty can be seen as a mechanism to protect minorities, not only as between federated entities within the federal State, but also within each federated entity, which must "take account, in its actions, of the interests of the other authorities".

350. The partition of the Province of Brabant is accompanied by new rules protecting French-speaking minorities living in the six administratively protected communes (communes à facilités) of the new Province of Flemish Brabant, and of the Flemish minorities in Brussels. The main innovations are the institution of a Deputy Governor to assist the Governor of the Province of Flemish Brabant, and a broadening of the jurisdiction of the Standing Committee on Language Monitoring, together with a strengthening of its powers.

Ideological and philosophical minorities

351. Mechanisms to protect ideological and philosophical minorities have been set up in implementation of articles 11 and 131 (former articles 6 bis and 59 bis, paragraph 7) of the Constitution. These consist of:

The conclusion of a cultural pact (Act of 16 July 1973). This pact, concluded between the various political groupings, aims at guaranteeing a balanced representation of the various cultural tendencies (C.A., 20 January 1994, No. 7/94);

The "alarm-bell procedure": if a text being debated in a Community Council contains a provision that is discriminatory on ideological grounds, this procedure may be triggered on the initiative of at least one quarter of the councillors. The text is then submitted at federal level, where the balance of powers should enable a solution to be found (C.A., No. 86/93).

352. Belgium's institutional structure is based on equilibrium and peaceful coexistence between the different communities. In a decision of 22 December 1994

(C.A., No. 90/94, 22 December 1994, M.B., 12 January 1995), the Court of Arbitration, in accordance with its practice concerning fundamental rights in general, showed sensitivity towards that principle. The first contested provision concerned the composition of the French Community Council, which, albeit indirectly, deprives the French-speaking inhabitants of the Dutch-speaking administrative district of Hal-Vilvorde, among others, of the possibility of being represented on the French Community Council, a legislative assembly that is "the reflection of their identity and of their views". The Court considered, in a succinct but proper appraisal, that this situation does not deprive them of the right to have a cultural life of their own in common with the other members of the group. Article 27 of the Covenant to some extent encompasses the right to participate in decisions of concern to the minority at national and regional levels, but evidently does not imply any right to participate in elections to a legislative assembly that has no competence with regard to the minority and that therefore cannot take decisions of direct concern to that minority.

353. Secondly, the French-speaking appellants contested the obligation to take an oath in Dutch when elected to the Flemish Council. The right to use their own language, even in public, is undoubtedly protected by article 27, but here the Court dismissed them on the basis of the criterion of proportionality: the contested provision was found not to constitute a manifestly unreasonable restriction of the right guaranteed.

354. It goes without saying that "rights of minorities", like "fundamental individual rights", are not absolute. They are also subject to justified restrictions and are limited by other rights and by the rights of others. Thus, prescriptions in the general interest and those of safety, such as the obligation to wear a helmet, sometimes prevail over the religious rule that requires the wearing of a turban. In the case at issue, the argument that prevailed in the Court of Arbitration's decision concerning article 27 of the Covenant, was that an oath is of as much concern to the recipients as to those who swear it.

355. In comparing the contested provisions with article 27 of the Covenant, the Court implicitly took the direct applicability of the latter as its starting point and recognized in other terms that persons belonging to an ethnic, religious or linguistic minority may in fact invoke the right, in common with the other members of the group, to have their own cultural life, to practise and profess their own religion or to use their own language. The issue of its applicability to foreigners has not yet been raised, but would appear to be subject to the same principle.